



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 201 OF 1999

- 1) Potanna s/o Sheshalu Sagmod,
since deceased, L.Rs.
- 1A) Anusayabai w/o Potanna Sagmod,
Age 53 years, Occ. Agril. & Household,
R/o. Biloli, Dist. Nanded
- 1B) Gangadhar s/o Potanna Sagmod
since deceased, L.Rs.
- 1B/a) Smt. Vitthabai Gangadhar Sagmod,
Age 50 years, Occ. Household,
R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.
- 1B/b) Gangaprasad s/o Gangadhar Sagmod,
Age 25 years, Occ. Agriculture,
R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.
- 1B/c) Sheshalu s/o Gangadhar Sagmod,
Age 18 years, Occ. Agriculture,
R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.
- 2) Posanibai w/o Sheshalu
since deceased, her L.Rs.
- 2A) Anusayabai w/o Potanna Sagmod,
Age 79 years, Occ. Household
R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.
- 2B) Gangadhar s/o Potanna Sagmod,
since deceased, through L.Rs.
- 2B/a) Smt. Vittabai Gangadhar Sagmod,
Age 50 years, Occ. Household.
- 2B/b) Gangaprasad s/o Gangadhar Sagmod,
Age 25 years, Occ. Agriculture.

2B/c) Sheshalu s/o Gangadhar Sagmod,
Age 18 years, Occ. Agril.
2B-a to 2B-c R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.

3) Gangubai w/o Potanna Paldelu ... **Abated**

... **Appellants**
(Orig.Deft. 1 to 3)

VERSUS

Gangaram s/o Potanna (Madhava) Bankod,
Age 45 years, Occ. Agriculture,
R/o. Yetala, Tq. Dharmabad,
Dist. Nanded.

... **Respondents**
(Orig. Plaintiff)

...

Advocate for Appellants : Mr. P G. Gunale

Advocate for Respondent : Mrs. S.G. Chincholkar h/f Mr. G.N. Chincholkar

...

CORAM : **SHAILESH P. BRAHME, J.**

RESERVED ON : **04.10.2025**

PRONOUNCED ON : **17.10.2025**

JUDGMENT :

Heard both the sides finally.

2. Appellants are the original defendants, who are challenging alternate finding of facts, by which a decree of injunction has been passed by the Lower Appellate Court reversing decree of dismissal of suit passed by the Trial Court. The parties are referred to by their original status in suit.

3. Second Appeal was admitted vide order 24.07.2008 formulating following substantial questions of law :

(i) Whether the finding on point no. 1 recorded by the lower Appellate Court, without considering the evidence led by the defendants, can be said to be correct ?

(ii) Whether the plaintiff was in settled possession of the property on the date of filing of the suit ?

4. The controversy pertains to a house situated at village Yetala Tq. Biloli Dist. Nanded, which is claimed to be ancestral property of the plaintiff. It is contended by him that he had two real uncles and aunt. The uncles were illatom son-in-law and they were residing at their in laws place. The defendant no. 1 is the son of defendant no. 2 and he is also son in law of defendant nos. 3 and 4. Defendant No. 4 is real uncle of the plaintiff and defendant No. 3 is aunt. It is contended that plaintiff's father was alone residing in the suit house and after his demise the plaintiff is in continuous possession of the same. It is contended that defendant no. 1's father, in collusion with the revenue officers mutated their name and started obstructing the possession. Hence Regular Civil Suit No. No. 143/1985 was filed for injunction simplicitor.

5. The defendants contested the suit on the ground that defendant no. 1 purchased suit house vide unregistered sale-deed dated 25.05.1970 from plaintiff's father Potanna. Since then he is claimed to be in possession of the suit house continuously. A plea of adverse possession has also taken alternatively. It is contended that the taxes have been paid by him.

6. Plaintiff examined four witnesses and the defendants examined five witnesses. They produced on record the tax receipts, certificates of Village Development Officer, assessment list and record of village Panchayat Office in order to corroborate rival claim of their possession. Trial Court dismissed the suit vide judgment dated 31.08.1987. Being aggrieved, plaintiff preferred Regular Civil Appeal No. 204/1987. It was allowed vide judgment dated 21.08.1992.

7. Learned counsel for the appellants-defendants Mr. Gunale submits that the findings recorded by the Lower Appellate Court in respect of documents Exh. 36 to 42 are perverse because those are produced by the

defendants. It is further submitted that the Lower Appellate Court failed to exercise the jurisdiction as per Section 96 read with Order 41 of the Code of Civil Procedure, as the defendants' documentary and oral evidence has totally been overlooked. The Appellate Court committed error of jurisdiction considering the law laid down by Supreme Court in the matter of **Santosh Hazari vs Purushottam Tiwari (Dead) By L.Rs.; (2001) 3 Supreme Court Cases 179**. It is further submitted that Exh. 62 to 65 are doubtful and rightly discarded by the Trial Court. He would further submit that the substantial questions of law will have to be answered in favour of the defendants.

8. Per contra, Mrs. Chincholikar would submit that the defence of the appellants is founded on very fragile plea of acquiring title by unregistered document. It is submitted that the tax receipts would not confer title on the defendants. In the absence of any documentary evidence, the Lower Appellate Court rightly reversed the decree. It is further submitted that Exh. 62 to 65 would corroborate the plea of possession of the plaintiffs.

9. I have gone through the judgments passed by both Courts below. The lower Appellate Court considered the evidence of the plaintiffs' witnesses in paragraph No. 6. But it nowhere considered the evidence adduced by the defendants. Defendants examined five witnesses namely Gangabai, Bankanna, Rajanna, Potanna and Bhaurao. However, entire judgment is silent on the oral evidence adduced by the defendants on record. Even the documentary evidence in the form of the certificate at Exh. 36 and the tax receipts from Exh. 37 to 42 produced by the defendants has also been escaped from the notice of the Lower Appellate Court. The First Appellate Court is empowered to appreciate facts as well as law and it's a final court of appreciation of facts. The error of jurisdiction of the Lower Appellate Court is apparent.

10. The Supreme Court in the matter of **Santosh Hazari (supra)** has explained the scope of jurisdiction exercisable by Lower Appellate Court under Section 96 read with Order 41 of CPC. The following are the relevant extract:

“15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under

appeal, would ordinarily suffice (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. (See Madhusudan Das Vs. Smt. Narayani Bai) The rule is -- and it is nothing more than a rule of practice -- that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh) Secondly, while reversing a finding of fact the appellate Court must come into close

quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.”

11. In the present case Lower Appellate Court proceeded to reverse the finding of the Trial Court, without coming into close quarters of the reasons assigned by the Trial Court. The Trial Court considered the evidence of defendants and particularly discussed in paragraph nos. 7 and 8 of the judgment. I am of the considered view that lower Appellate Court failed to exercise the jurisdiction and the first substantial question of law needs to be answered in favour of the defendants.

12. My attention is adverted to the findings recorded by the lower Appellate Court in paragraph no. 6. The following observation are attacked :

“In support of oral evidence of plaintiff, plaintiff has filed certificate from gram Penchayat which is at Exh. 36 wherein it has been mentioned that plaintiff is resident of

village Yetala and house No.20/A(140) and (146) is owned by him. Further the plaintiff has filed tax receipts regarding the suit property. These tax receipts are regarding the payment of Gram Panchyat tax regarding the suit property which are at Exhs. 37, 38, 39, 40, 41 and 42 which shows that plaintiff has paid the house tax regarding the suit property to gram Panchyat.”

The defendants produced on record and proved certificate Exh. 36 and tax receipts at exh. 37 to 42 indicating defendant no. 1's name as a tax payer and the owner of the suit house. The plaintiff did not adduce the above referred oral evidence. On the contrary plaintiff adduced documentary evidence at Exh. 62 to 65. The lower Appellate Court has committed perversity in reading the documents referred above.

13. Learned Counsel for the respondents harped upon the probative value of unregistered sale-deed dated 25.05.1970, on the basis of which a possession is claimed by the defendants. The document does not have the probative value. The defendants have brought on record Exh. 36 showing name of the defendant No. 1 and it was issued on 08.07.1983. The tax receipts from Exh. 37 to 42 may not confer title on the defendants but they corroborate plea of possession. Those receipts show the payment of tax from 1976-1977 upto 1984-1985. The plaintiff produced Exh. 62 and 65 which are of the year 1987. But there is no evidence on record to show as to whether plaintiff was in possession prior to 1987. Testing the material on record on principles of preponderance of probabilities, defendants case appears to be stronger than the plaintiffs. In that view of the matter, it cannot be said that the plaintiff is in settled possession of the suit house and second substantial question of law needs to be answered against the plaintiff.

8. It is rightly contended by learned counsel Mr. Gunale that the oral evidence is corroborated by the documentary evidence, adduced by the defendants. It indicates that in the year 1970 plaintiffs' father left village Yetala and shifted to Ashti. He died at Ashti. Therefore, in all probabilities possession of the defendants from 1970 cannot be ruled out.

9. It needs to be considered that plaintiff has filed suit for injunction simpliciter. The plea of the defendants is that of acquisition of title, albeit by unregistered sale-deed executed on 25.05.1970, in the alternatively on plea of adverse possession. When the title of the plaintiff was challenged it was mandatory for the plaintiff to claim declaration. In view of law laid down by Apex Court in the matter of **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by L.Rs. And Ors.; AIR 2008 Supreme Court 2033** a suit simpliciter for injunction was not maintainable. I am of the considered view that the suit filed by the plaintiff is rightly dismissed by the trial Court.

10. For the reasons stated above, I find that appellants/defendants have made out a case of answering both the substantial question of law in their favour. I therefore pass following order:

Order

- (a) Second Appeal is allowed.
- (b) The judgment and decree dated 21.08.1992 passed in Regular Civil Appeal No. 204/1987 is quashed and set aside.
- (c) Regular Civil Suit No. 143/1993 shall stand dismissed.
- (e) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

mkd/-