



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

SECOND APPEAL NO. 283 OF 2004

1. Govind s/o. Ramrao Uttarwar,
Age-40 years, Occupation – Contractor,
R/o. Gokulnagar, Nanded.

2. Vishwambhar s/o Bhimrao Patil,
Age 50 years, Occu – Agril;
R/o. Gulabwadi, Tq. Kandhar,
District : Nanded

-----APPELLANTS
(Ori. Deft. No. 2 and 4)

VERSUS

1. Vijaysingh s/o. Govindsingh Tehra,
Deceased, through LRs

1-A) Sujitsingh Vijaysingh Tehra,
Age 45 years, Occu : Business
R/o Gadipura, Nanded,
District Nanded.

1-B) Ajitsingh Vijaysingh Tehra,
Age 42 years, Occu : Business,
R/o Gadipura, Nanded,
District Nanded.

1-C) Ranjeetsingh Vijaysingh Tehra,
Age 38 years, Occu : Business,
R/o Gadipura, Nanded,
District Nanded.

1-D) Pooja w/o Bhupendrasingh Pardeshi,
Age Major, Occu : Household,
R/o Gadipura, Nanded,
District Nanded.

1-E) Rajni @ Nirmala Vijaysingh Tehra,

(Died through LRs Respondent 1-A to 1-D are legal heirs of Respondent 1-E also)

-----RESPONDENTS

Mr. S. V. Kurundkar, Advocate for Appellants
Ms. S. G. Chincholkar h/f Mr. G. N. Chincholkar, Advocate for Respondent
Nos. 1-A to 1-D

CORAM : R. M. JOSHI, J.
RESERVED ON : 05 AUGUST, 2025
PRONOUNCED ON : 12 AUGUST, 2025

JUDGMENT :-

1. This appeal takes exception to the judgment and decree passed by the First Appellate Court in Regular Civil Appeal No. 216/1988 dated 08.04.1993 reversing the judgment and decree passed in Regular Civil Suit No. 674/1984 and ultimately decreeing the said suit of simplicitor injunction, restraining the defendants from interfering into the possession of the plaintiff over the suit property except following due procedure of law.

2. Parties are referred to as “Plaintiff” and “Defendants” for the sake of convenience.

3. This Court by order dated 12.10.2007 framed substantial questions of law. Additional substantial question of law was framed by order dated 30.07.2025. After framing substantial questions of law, learned counsel for both sides were heard thereon.

4. Following substantial questions of law arise for consideration and determination in this appeal :-

(i) Whether the plaintiff can claim any legal right though was not admitted as member of the Housing Society and merely on the basis of a Kararnama (agreement) purportedly executed by original defendant No. 2 and, therefore, can claim his possession over the plot.?

(ii) Whether the possession of the plot can be claimed when in case of open plot presumption is that the possession is that of an owner and that the plaintiff is not admittedly owner by virtue of any registered document nor is member of Anandnagar Cooperative Housing Society and hence, the findings of the first appellate court are perverse.

(iii) “Whether the First Appellate Court has committed error in decreeing the suit by ignoring the pleadings of the plaintiff in the plaint and Section 91 of the Maharashtra Co-operative Societies Act?”

5. In order to appreciate the contentions of the rival parties, it would be relevant to take note of the facts involved in this case which reads thus:-

Plaintiff filed suit for simplicitor injunction restraining the defendants from obstructing the possession over the suit plot bearing No. 54 Anandnagar Co-operative Housing Society, Nanded. The suit initially came to be filed against the vendor of the plaintiff i.e., defendant No. 2 and purported purchaser of the suit property defendant No. 4. In addition thereto, Co-operative Housing Society as well as Secretary of the society were joined as a

party defendant. Defendant No. 1-Society and Defendant No. 3-Secretary of the society however came to be deleted from the array of defendants during the trial.

6. It is a case of the plaintiff that he purchased the suit plot from defendant No. 2 who is the member of Anandnagar Co-operative Housing Society. It is contention of the plaintiff that by agreement dated 14.02.1977, the said plot was sold to the plaintiff by defendant No. 2 and a possession thereof was handed over to him. It is his contention that he constructed hut therein and initially had ran hotel there from. It is claimed that at the time of filing of the suit, he was using the said structure for his residence. It is also claimed that he has water and electricity connection in the said premise and that he is paying municipal taxes. There is allegation by the plaintiff that the secretary of the society had made demand of illegal gratification of Rs. 5,000/- for transferring share certificate in his name. Since, defendant Nos. 2 and 4 started obstruction of the plaintiff over the suit property, suit for injunction came to be filed.

7. Defendant Nos. 2 and 4 filed written statement at Exhibit 34. It is admitted that defendant No. 2 as the member of the society, he claims to have allotment letter and share certificate in his name. It is denied that there is any transaction between defendant No. 2 and plaintiff so also handing over of the

possession of the suit plot to him. It is also denied that there exist any structure on the suit plot. It is specifically claimed that he executed the transfer document of the plot in favour of defendant No. 4 for consideration of Rs. 8551/-. According to this, defendant No. 4 applied for the transfer of membership and also paid charges there for to the society. There is also claim by the defendant No. 4 that he received possession of the suit plot from the Architect. Reference is also made to the resolution passed by the society dated 26.09.1984 in respect of the transfer of the plot in the name of defendant No. 4.

8. Learned Trial Court framed issues. Issue was also framed as to whether the plaintiff has proved his possession over the suit plot and issue jurisdiction of the Court was also framed. Plaintiff examined himself at Exhibit 47 and also led evidence of Gyanoba Bhaskar at Exhibit 49. As against this, defendant No. 4 examined himself at Exhibit 56 and led evidence of Raosaheb at Exhibit 66. Learned Trial Court dismiss the suit by judgment and decree dated 21.10.1988. Plaintiff being aggrieved by the same, preferred Regular Civil Appeal No. 216/1988. First Appellate Court reverse the said judgment and decree passed by the Trial Court and decreed the suit. Hence, this Second Appeal.

9. Learned counsel for defendant No. 4/appellant submits that the suit for simplicitor injunction has filed by the plaintiff is not tenable, in view of the fact that doubt has been created in order to his title in the suit plot. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of **Anahula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and ors AIR 2008 SC 2033** he also drew attention of the Court in this regard to the judgment in case of **Jharkhand State Housing Board Vs. Didiar Singh and another (2019) 17 SCC 692**. He further argued that the pleadings before the Trial Court indicate that the issue with regard to the resolution passed by the Co-operative Society was also in question for determination. It is his contention that in spite of the fact the society was deleted from the array of defendant, the said issue still survives for consideration of the Court. By drawing attention of the Court to Section 91 of the Maharashtra Co-operative Societies Act, 1960, (for short "Societies Act") it is argued that the only Co-operative Court has jurisdiction to decide the said issue and that the jurisdiction of Civil Court is barred. It is his submission that the suit was not maintainable for want of jurisdiction of the civil Court. It is further argued that in order to substantiate any title document in favour of the plaintiff which is absent here in this case it is also argued that there are inconsistent stands taken by the plaintiff with regard to the existence of the structure on the plot and use thereof. Finally

it is argued that the description and the boundaries of the said property is not correctly referred and as a result of aforesaid facts, the suit is not maintainable. According to him since lawful possession over the suit plot has not been established, question of grant of any injunction in favour of the plaintiff does not arise. Thus, he seeks answer of the specific question of law in favour of defendant No. 4/appellant.

10. Learned counsel for plaintiff supported the impugned order. According to her, evidence on record more than clearly demonstrate that defendant No. 2 was the original owner of the suit plot and that he had transferred the said plot in favour of the plaintiff after accepting entire consideration and possession thereof was also handed over to him. It is her submission that in case of suit for injunction, it is sufficient for the plaintiff to prove his possession. According to her, the evidence led by the plaintiff is supported by his witness and also in view of the cross examination of defendant No. 4's witness, the findings recorded by the First Appellate Court with regard to the possession of the suit plot by plaintiff do not deserve interference. It is further argued that once the society is deleted from the array of defendants, the bar has sought to be contended in view of Section 91 or Section 164 of the Societies Act would not attract.

11. Plaintiff, in support of his pleadings with regard to the transfer of suit plot by defendant No. 2 in his favour deposed about the transaction i.e., agreement dated 14.02.1977. He claimed to have been put into the possession thereof and having erected the hut. He further claimed that he ran hotel for an year and thereafter he using the same as residence. It is pleaded that he had water connection and electricity connection over the structure on the suit plot so also he pays municipal taxes. During the course of cross examination it has come on record that there is temporary (kaccha) construction over the disputed plot. There is no denial about the existence of a structure thereon. There is further no denial of water and electricity connection being obtained therein so also payment of municipal taxes. This evidence of the plaintiff gets duly supported by PW 2 Gyanoba. This witness is friend of defendant No. 2 and scribe of document Exhibit 50. He specifically states about there being discussion in a meeting between plaintiff and defendant No. 2 in the presence of the witness on 14.02.1977. He claims that in his presence, the consideration amount was paid and that the entire transaction took place at bus stand. He also states about defendant No. 2 having brought the stamp paper and asked this witness to sign the document. He also claims that the possession of the plot was handed over by defendant no. 2 to plaintiff. In the cross examination, nothing has been elicited in order to create doubt about the testimony of this

witness.

12. As against this, the evidence of defendant No. 2 indicates that he has no knowledge about the transaction between plaintiff and defendant No. 2 though he claims that there is no construction on the plot, his witness DW 2 Raosaheb clearly admits that there is one hut on the suit plot. However, he does not know the material with which the construction has been done. He thereafter accepts the fact that it is made of loose bricks. He shows his ignorance about plaintiff residing on the suit plot however does not deny the same fact.

13. The above evidence clearly indicates that plaintiff has proved transaction between him and defendant No. 2 and finding over the possession of the suit plot to him on 14.02.1977. There is further evidence to indicate that the suit plot is not open plot as sought to be contended by the defendants but there is construction thereon. Even if it can be said that there is no concrete evidence in order to show nature of construction but existence of construction has been duly established. Thus, the suit plot cannot be said to be an open land. It is immaterial as to whether the construction has been done with permission of the planning/local authority. Even if an action is permissible in law for its removal, it cannot be held that suit plot is open land.

14. At this stage, it would be relevant to take note of the judgments of

the Hon'ble Supreme Court in case of Anathula Sudhakar (cited supra). Perusal of the said judgment indicates that it is held by the Hon'ble Supreme Court that where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession with or without consequential injunction is the remedy. Where plaintiff's title is not in dispute but he is out of possession. He has to sue for the possession with consequential injunction. It is further specifically held that where there is merely an interference with the plaintiff's lawful possession or threat of possession, it is sufficient to sue for an injunction to simplicitor injunction.

15. Though, it is sought to be argued on behalf of defendant No. 4-appellant about plaintiff being not in lawful possession of the suit plot, further there is evidence led by the plaintiff in order to indicate that he has purchased the suit plot from the original owner i.e., defendant No. 2 by paying due consideration and he being put into the possession of the suit plot. In view of these facts, Section 53 A of Transfer of Property Act, 1882 will have application to the present case. Even if there is no title document in favour of the plaintiff in the form of registered sale deed, it is open for the plaintiff to protect his possession from defendant No. 2 as well as any other person by filing suit for simplicitor injunction, restraining his removal except due process of law.

16. In so far as the issue raised about the jurisdiction of the civil Court, there cannot be any dispute that the civil Court will have jurisdiction to restrain the defendants from causing interference into the possession of plaintiff over the suit property and construction made thereon suit plot. Though, in the written statement, reference has been made with regard to the certain actions of the society including passing of the resolutions, the issue of possession of the plaintiff of the suit plot with structure thereon, can be independently decided without going into the issues raised in respect of the acts of the society. The decision of issue of protection of possession of plaintiff over suit plot is not dependant on decision of those issues. In such circumstances, after deletion of society and the secretary of society from the array of defendants, nothing remained to have been decided by the Trial Court in respect of resolution or any act done by the society. Consequently, the bar created by Section 91 or the application to Section 164 of the Societies Act would have no application to the present case.

17. The learned Trial Court has denied the relief of injunction to the plaintiff solely on the ground that he does not have title in suit plot for want of the document i.e. registered sale deed in his favour. However, the Trial Court has failed to take into consideration the relevant facts indicating the transfer of property for consideration by the original owner i.e., defenant No. 2 in favour

of plaintiff including handing over of possession thereof. It has also ignored the threat of the dispossession of plaintiff from suit plot without following procedure of law at the hands of defendant Nos. 2 and 4. The Court thus has failed to take into account the effect of Section 53A of Transfer of Properties Act, 1882 that is error committed by the Trial Court has been rightly corrected by the First Appellate Court.

18. As a result of above discussion, substantial questions of law are answered in negative. Consequently no interference is caused in the impugned judgment and decree.

19. Appeal stands dismissed.

20. Pending Civil Application, if any, stands disposed of.

21. At this stage, learned counsel for appellants seeks continuation of interm relief for a period of four (4) weeks.

22. Learned counsel for Respondents opposes the said request.

23. Since the interm relief is in force from 12.10.2007, the same is continued for a period of Four (4) weeks.

(R. M. JOSHI, J.)

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