



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 357 OF 2024 WITH
CIVIL APPLICATION NO. 3285 OF 2024
IN SA/357/2024

Taibai Bandu Kale
VERSUS
Sheshraj Suryabhan Kalane

- Mr. S. N. Gaikwad h/f Mr. S. P. Salgar, Advocate for the Appellant
- Mr. M. R. Sonawane, Advocate for the Respondent

CORAM : R. M. JOSHI, J
DATE : AUGUST 04, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Appeal under Section 100 of Code of Civil Procedure takes exception to the judgment and decree passed by the First Appellate Court dated 15.01.2019 in RCA No. 268/2017, whereby the judgment and decree passed by the Trial Court in RCS No. 212/2006 came to be set aside. The First Appellate Court has dismissed the counter-claim filed by the Defendant and decreed the suit. The Defendant is directed to handover the peaceful and vacant possession of land admeasuring 4R

encroached by her in the land of Plaintiff as shown in map Exh. 86. Perpetual injunction was also granted obstructing possession of the Defendant over suit property.

3. The facts which led to the filing of the suit by Plaintiff indicates that Plaintiff claims to be owners of land admeasuring 33R from Gut no. 544 situated at Belwandi Bk, Tq. Shrigonda, Dist. Ahmednagar. He also claims to have inherited suit property from his ancestors. It is the contention of the Plaintiff that Defendant had purchased 20R land from Gut No. 544 towards northern side. There is allegation about Defendant having been obstructing peaceful possession of the Plaintiff over suit property. During the pendency of the suit, plaint came to be amended and when it was found that Defendant has encroached upon 4R land, possession of the encroached portion is sought.

4. Defendant resisted the suit by filing written statement and counter-claim. It is his case that he is owner and is in possession of land toward northern side of Gut No. 544 to the extent of 20R land. It is claimed

that that suit land was purchased under a registered sale deed. Defendant denied title of the Plaintiff over the suit property. It is also claimed by Defendant that the installation of the mobile tower was permitted by Plaintiff in his land and being aggrieved by the same, the suit came to be filed by Plaintiff. It is claimed in the additional written statement pursuant to the pursuant to amendment to the plaint that there is no encroachment over the suit property and if it so found, the Plaintiff claims to have become owner thereof by adverse possession. Trial Court dismissed the suit and allowed counter-claim, whereas First Appellate Court reversed the said findings and decreed suit with dismissal of counter-claim.

5. Learned Counsel for the Defendant submits that the First Appellate Court has committed error in decreeing the suit and dismissing the counter-claim on the ground that the Defendant has not entered into witness box and she has examined her husband. It is his submission that since her husband had personal knowledge about facts, examination of husband was sufficient for Plaintiff to prove her case. It is his

further submission that the evidence of surveyor indicates that the survey was not carried out of the disputed land properly as it does not reflect the fact of installation of tower. It is his further submission that the First Appellate Court has committed error in considering the evidence on record, which amounts to perversity.

6. Learned Counsel for the Plaintiff supported the impugned judgment and decree. It is his contention that once it is proved by examining the surveyor that Defendant is holding over and above 20R land, which was purchased by him and that there is no other occupier in Gut No. 544, the findings recorded by the First Appellate Court with regard to the encroachment cannot be faulted with.

7. It is settled position of law that unless substantial question of law is involved, this Court would not get any jurisdiction to entertain the Second Appeal.

8. Perusal of the judgment indicates that the First Appellate Court has not rejected the counter-

claim of the Defendant solely on the ground that the Defendant did not enter upon witness box. The First Appellate Court had taken into consideration the admitted fact that the Defendant has purchased 20R land towards northern side of Gut No. 544. The evidence led by the surveyor sufficiently indicates that Defendant though has purchased 20R land but is in actual possession of 24R land. The findings of fact recorded by the First Appellate Court, which was permissible for the First Appellate Court to record the same afresh, are not perverse.

9. Once it is admitted fact the Defendant is the owner of the 20R land whereas the Plaintiff is owner of the rest of the land and there is evidence to indicate more than 20R land being held by Defendant, the findings recorded to the effect that there is encroachment of 4R land is correct.

10. In fact the perusal of judgment of Trial Court indicates that it committed error in appreciating pleadings, evidence and position of law governing the subject matter. The First Appellate Court rightly corrected error committed by Trial Court. In the facts

of the case, findings recorded and conclusion drawn by Appellate Court are not incorrect much less perverse to interfere therein.

11. As a result of above discussion, there involves no substantial question of law. Hence, Appeal stands dismissed. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)