



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

**SECOND APPEAL NO. 784 OF 2012
WITH
CIVIL APPLICATION NO. 13614 OF 2012**

**Shaikh Maheboob Shaikh Thr Lrs Shaikh Sarvar And Ors
VERSUS**

Mushtak Ahmed Khan Saddat Khan Thr Lrs Zaker Begum And Ors

Mr. S. S. Bora, Advocate for Appellants

Ms. Manjushri Narwade h/f Mr. A. S. Rasal, Advocate for Respondents

CORAM : R. M. JOSHI, J.

DATE : 28 July, 2025

PER COURT :-

1. This appeal is filed under Section 100 of Code of Civil Procedure taking exception to concurrent findings of facts and dismissal of suit filed by appellants/plaintiffs. The Second appeal can be entertained only in case there exists substantial question of law. In absence thereof, the Court cannot exercise jurisdiction to pass any order.

2. Appellants/original plaintiffs in this second appeal are seeking relief which was not sought before the Trial Court as well as First Appellate Court when the plaintiffs were unsuccessful in getting perpetual injunction against the defendants in the suit.

3. Parties are referred to as 'Plaintiffs' and 'Defendants' for the sake

of convenience.

4. Plaintiffs filed suit against the defendants bearing Regular Civil Suit No. 489/1993 for declaration, specific performance and perpetual injunction. The suit came to be dismissed by the Trial court by the judgment and decree dated 22.11.2010. Plaintiffs being aggrieved by the denial of the perpetual injunction in respect of remaining portion of suit land preferred in Regular Civil Appeal No. 190/2010. In this appeal no modification of judgment and decree passed by Trial Court was sought. Appellate Court was not even called upon to modify the injunction to the extent of not dispossessing the plaintiffs from the portion of suit property without following due process of law. Since the appeal came to be dismissed by First Appellate Court on merit, this second appeal.

5. Learned counsel for the appellants submits that apart from the merit of the appeal essentially the substantial question of law involved herein is that the Trial Court as well as the First Appellate Court have committed error in not moulding relief sought by the plaintiffs. It is his contention that admittedly the plaintiffs are in possession of the portion marked 2 of suit property in respect of which the relief of injunction has been denied to the plaintiffs. Similarly suit for specific performance is also dismissed. It is his contention that once it is held by the Trial Court that the plaintiffs are in possession of the

suit property, it was incumbent on the part of the Trial Court to prevent the defendants from dispossessing the plaintiffs from suit property except due procedure of law. In order to support his submissions with regard to the power of the Court to mould the relief, he has placed reliance on the judgment of Hon'ble Supreme Court in case of ***J Ganapatha and ors Vs. N. Selvarajalou Chetty Trust and Ors 2025 (2) CCC*** wherein it is held by the Supreme Court that the concept of 'Moulding of relief' refers to the ability of Court to modify or shape a relief sought by party in legal proceedings based on the circumstances of the case. Similarly, he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Ramesh Chand Ardawatiya Vs. Anil Panjwani 2003 (7) AIC 625*** in order to submit that the Supreme Court has granted the relief of injunction against the defendants by restraining the defendants from interfering with the possession of the plaintiffs over the suit property except by due procedure of law, as in the said case too, the plaintiffs were in position to prove possession over a suit property. Similarly, he took aid of the judgment of Supreme Court of ***Rajendra Tiwary Vs. Basudeo Prasad and Ors. AIR 2002 SC 136*** in order to support his submission that the larger relief being already sought, the relief of injunction restraining the defendants from dispossession without due procedure of law is not likely to cause any prejudice to the other side.

6. Learned counsel for respondents supported the impugned order.

7. This appeal being under Section 100 of the Code of Civil Procedure, cannot be entertained unless substantial question of law is involved therein. There cannot be any dispute with regard to the proposition of law that it is open for the Court to mould the relief. Moulding of relief however would be a discretion to be exercised by the Court in the facts and circumstances of the case. The Trial Court has refused to such discretion on the ground that the since the title of the plaintiffs has not been established in respect of the portion of the suit property and that plaintiffs are not entitled for decree of specific performance in respect of suit property (portion marked 2) and hence defendants cannot be perpetually enjoined from dispossessing the plaintiffs from the suit property. In the facts of the case and having regard to the evidence on record, such refusal of relief by the Trial Court cannot be called as perverse. Non exercise of the discretion by the Court in the facts of the case would not be construed as perverse finding. Hence such non exercise of the discretion by itself will not become substantial question of law, having regard to facts and circumstances of present case.

8. From the facts appearing from record, it could be seen that plaintiffs always desired only to seek perpetual injunction against the defendants and never intended to ask for limited relief of injunction from

dispossession except due process of law. This interference is inevitable in view of the fact that Trial Court denied perpetual injunction in respect of suit property portion Marked 2. The plaintiffs having knowledge that they are not granted relief of perpetual injunction against defendants, do not seek even alternatively modification of relief before the First Appellate Court. It was always open for the plaintiffs to call upon the First Appellate Court to modify the said relief and to seek a limited injunction against the defendants. Having this not been done consciously, the plaintiffs have sought to challenge the judgment and decree passed by the Trial Court and sought perpetual injunction. Thus, plaintiffs never had intention to seek the relief which is now sought in this second appeal.

9. As far as the judgments cited supra, there cannot be any dispute made with regard to the proposition of law sought to be canvassed on behalf of the learned counsel for the appellants that in appropriate cases, it would be open for the Court to modify the relief. However it does not mean that non exercise of such discretion will have to be treated as perversity in the impugned order in all cases. In case of Ramesh Chand (cited supra), the Hon'ble Supreme Court has set aside the impugned judgment and decree and thereafter has prevented the defendants therein from dispossessing the plaintiffs from the suit property without due process of law. Here, in this case,

there is no reason or justification for causing interference in the findings recorded by the Trial Court denying specific performance and injunction in respect of suit property made 2, which has affirmed by the First Appellate Court. As far as the judgment in case of J Ganapatha (cited supra) is concerned, the Hon'ble Supreme Court has held that the modification or moulding of the relief by the Trial Court was justified. Thus, these two judgments would not support the contention of the learned counsel for the appellants that there involves a substantial question of law in the present case.

10. Since no substantial question of law is involved in this appeal. Question of grant of any relief to the appellants does not arise. Appeal, therefore, deserves to be dismissed and accordingly dismissed. Pending civil application stands disposed of.

11. At this stage, learned counsel for appellants seeks continuation of the interim relief for a period of six weeks to take exception to this order before the Hon'ble Supreme Court. Learned counsel for respondents vehemently opposed the said request on the ground that litigation is pending since long.

12. Since, interim relief is in force for more than 12 years, the same is extended for six weeks.

(R. M. JOSHI, J.)

bsj