

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 270 OF 1992**

Ramchandra Genu Jadhav (since deceased
through his legal heir)
Pandurang Ramchandra Jadhav, R/o. ... Appellants
Ambeada, Tal: Satara, District Satara.

Versus

1. Bandu Keshav Jadhav(since deceased
through Lrs)
2. Bhiku Bandu Jadhav (since deceased
through Lrs)
- 2a) Ranjana Hindurao Jadhav
- 2b) Kashinath (Ganesh) Hindurao Jadhav
- 2c) Vijaya Mansingh Kadam
- 2d) Mahesh Hindurao Jadhav
- 2e) Sachin Hindurao Jadhav
- 2f) Maya Sunil Kadam
- 1a to 2f are r/o ambewade, Tal: Satara,
District Satara.
3. Sakharam Bandu Jadhav(since
deceased through Lrs)
- 3a) Avinash Sakharam Jadhav
- 3b) Sangram Sakharam Jadhav
R/o. Koparada (near Kashil)
Tal: Satara, District Satara.
- 4) Tukaram Bandu Jadhav

(since deceased through Lrs)

4a) Arun Tukaram Jadhav

4b) Lakshaman Tukaram Jadhav

4c) Ramdas Tukaram Jadhav ... Respondents

All are r/o. Ambawada Budruk,

Tal: Satara, District: Satara.

No. 3, now at Koparda(near Kashil, Taluka

Satara, District Satara.

Mr. Kayval P. Shah for Appellants.

Mr. Ravindra Vishnu-Laxmi Sankpal i/b. R.V. Sankpal and Associates for Respondent Nos. 2a to 2f.

CORAM : GAURI GODSE, J.

DATED : 20th MARCH 2025

JUDGMENT:

1. Heard learned counsel for the parties. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit for injunction. The plaintiff claimed title on the suit property based on a registered sale deed executed by defendant no.1. The plaintiff, therefore, claimed that he is put in possession in respect of the suit property as the owner and thus, prayed for an injunction restraining the defendants from obstructing his possession. Both the courts disbelieved the plaintiff's theory of title and possession and thus dismissed the suit.

2. The second appeal is admitted by order dated 6th August 1992, on the grounds (e) and (f) that reads as under:

“(e) The trial court ought to have held that the appellant derived his title to the suit property, under a validity registered document viz., the sale deed dated 22nd June 1977 executed by the 1st respondent-defendant, which execution was admitted by him and the case of the respondent of partition of the suit land is inconsistent with the facts and that in fact such a false stand was taken by the respondents in an attempt to deprive the appellant-plaintiff of his just right and title over the suit property.

(f) The trial court ought to have held that the appellant had proved that the appellant had proved both his title to the suit property and his possession thereof.”

3. Learned counsel for the appellants submitted that the sale deed in the plaintiff's favour is not disputed. He relies upon the description in the sale deed of the suit property to support his submissions that the entire suit property was sold to the plaintiff after taking the necessary permission from the competent authority. He submits that the said permission is produced on record at Exhibit-70, and the registered sale deed is produced on record at

Exhibit-82. He submits that the sale deed clearly records that the entire suit property was sold to the plaintiff and possession was handed over. He further submitted that defendant no.1 admitted execution of the sale deed; however, falsely contended that defendant no.1 has only a 1/4th share in the suit property. He submits that defendant no.1 sought to raise a claim that the plaintiff had fraudulently executed the sale deed, as defendant no.1 had borrowed a certain amount from the plaintiff.

4. Learned counsel for the appellants relied upon the relevant admissions in cross-examination by defendant no.1 and defendant no.2. He submitted that both the defendants' witnesses admitted that the plaintiff is in possession of the suit property. He submitted that even if defendants' contentions are accepted, that defendant no.1 has only a 1/4th share in the suit property, the defendants' admissions clearly support the plaintiff's contentions, that he is in possession of the entire suit property. He, therefore, submits that in view of the undisputed sale deed in favour of the plaintiff and the admissions by the defendants that the plaintiff is in possession of the suit property, both the courts erroneously dismissed the suit for injunction.

5. Learned counsel for the appellant submitted that in the event

the plaintiff is held entitled to protect his possession to the extent of defendant no.1's share, he cannot be dispossessed by the defendants without following due process of law. He submits that as the sale deed is not disputed, the plaintiff derives title to the suit property and thus, being the owner of the suit property, is entitled to protect his possession. He thus submits that both the courts erred in refusing an injunction, though the document, which is a registered document, transfers title of the suit property in favour of the plaintiff, and the admissions support the plaintiff's contentions that he is in possession of the suit property. He, therefore, submits that both questions of law must be answered in favour of the plaintiff.

6. Learned counsel for the defendants supports the impugned judgments. He submits that even if the sale deed is accepted as a validly executed sale deed, it would bind only defendant no.1's 1/4th share. He submits that admissions in the cross-examination relied upon by the learned counsel for the appellants cannot be accepted as an admission that the plaintiff is in exclusive and lawful possession of the suit property. He submits that the suit property is an ancestral joint family property and thus, both the courts rightly disbelieved the plaintiff's claim of exclusive title on the suit property. He submits that in the absence of any pleading and proof that the sale deed was executed for legal necessity, the plaintiff cannot claim

exclusive right in respect of the suit property. He, therefore, submits that at the most, the plaintiff would be entitled to a 1/4th share in the undivided property based on the sale deed. Hence, an injunction cannot be granted against defendant nos. 2 to 4, who are the co-owners of the suit property. He, therefore, submits that the plaintiff is not entitled to any injunction against the co-owners of the suit property.

7. To consider the rival submissions of the parties, I have perused the papers of the second appeal. A perusal of the written statement of the defendants and the oral evidence indicates that though defendant no.1 sought to dispute the validity of the sale deed, the execution of the document is not disputed. The document is a registered document that is exhibited and admitted in evidence. The contents of the sale deed indicate that the sale deed records the handing over of possession to the plaintiff. However, except for that clause in the sale deed, no supporting document indicates that actual physical possession was handed over to the plaintiff. There is no dispute that during the pendency of the suit, there was a temporary injunction granted protecting the plaintiff's possession. Thus, admissions relied upon by the learned counsel for the plaintiff are with reference to the plaintiff in possession during the pendency of the suit.

8. I have perused the oral evidence. The admissions in the cross-examination would not be sufficient to hold that the plaintiff is in exclusive possession of the suit property. Both the courts have examined the contents of the document as well as the oral evidence. Both the courts have accepted the defendants' case that it is an ancestral joint family property. The plaintiff's theory of being in possession is also considered by both the courts with reference to the oral evidence on record. Both the courts have referred to the revenue record and held that even the plaintiff got his name entered into the revenue record only to the extent of a 1/4th share. Thus, based on the evidence on record, both the courts refused to accept the plaintiff's claim of exclusive title and exclusive possession over the suit property. Hence, both the courts rightly held that the plaintiff's claim of simplicitor injunction cannot be granted as even defendant nos. 2 to 4 had undivided shares in the suit property.

9. Both the courts recorded findings disbelieving that the plaintiff had not derived exclusive title over the suit property. Hence, the findings recorded by both the courts disbelieving the plaintiff's claim of exclusive title and exclusive possession would not require any interference by this court. The plaintiff would therefore not be entitled to seek an injunction which would amount to granting an injunction against defendant nos. 2 to 4, who are co-sharers in the

suit property.

10. Thus, in view of concurrent findings recorded in disbelieving the plaintiff's theory of exclusive title and exclusive possession, the second appeal would not require any consideration by this court. Hence, both questions are accordingly answered in favour of the defendants.

11. For the reasons recorded above, the second appeal is dismissed.

12. At this stage, learned counsel for the appellants prays for the extension of interim protection in favour of the plaintiff. The interim injunction operating till date shall continue to operate till expiry of eight weeks from the date of uploading this judgment on the website.

(GAURI GODSE, J.)