



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.160 OF 2007

APPELLANT

Plaintiff (On R. A.)

: **Girdharilal Rameshwar Sarda,**
aged about 53 years, occupation – Cultivator
and Businessman, R/o. At and Post – Tahsil
and Dist. Washim.

..VERSUS..

RESPONDENTS

Defts. 1 to 3 (on R.A.)

- : 1 **Kedarmal Mahadeo Sarda,**
aged about 60 years, Occupation – R/o. Rithod,
Tahsil – Risod, Dist. Washim.
- 2 **Onkarmal Mahadeo Sarda,**
aged about 64 years, occupation – Businessman,
Residing in front of Corporation L.I.C. 138,
Gokul Road, Gandhi Nagar, Hubli – 20 Dist.
Dhanwar (Karnataka)
- 3 **Mohan Mahadeo Sarda,**
aged about 53 years, occupation – cultivator,
R/o. Rishod, Tah. Risod, Dist. Washim.

Mr. S. B. Mohta, Advocate for Appellant.

Mr. S. S. Deshpande, Advocate for Respondent Nos.1 to 3.

CORAM

: **M. W. CHANDWANI, J.**

DATE

: **2nd JULY, 2025.**

ORAL JUDGMENT

1. Heard.

2. The appellant challenges the judgment and decree dated 02.11.2006 passed by the learned Additional District Judge in Regular Civil Appeal No.4 of 2002 whereby, the learned First

Appellate Court overturned the judgment and decree dated 30.10.2001 passed by the learned Joint Civil Judge Junior Division, Washim in Regular Civil Suit No.165 of 1998 filed by the appellant.

3. The appellant filed a suit for permanent injunction against three brothers namely - Kedarmal Mahadeo Sarda, Onkarmal Mahadeo Sarda and Mohan Mahadeo Sarda on the premise that he has purchased the suit property from Mohan - original defendant No.3 by registered sale-deed dated 07.02.1994. However, respondent Nos.1 and 2 – the original defendant Nos.1 and 2 namely Kedarmal and Onkarmal are disturbing the appellant's possession. The Trial Court found that the appellant is in possession of the suit property and passed the decree for permanent injunction against Kedarmal and Onkarmal. Both of them filed an appeal before the learned Additional District Judge, Washim, which came to be allowed by observing that no partition was effected between Kedarmal, Onkarmal and Mohan. Therefore, Mohan who is claiming that the suit property fell in his share by way of partition/agreement dated 25.04.1989 on the basis of an unregistered partition deed

does not sustain. Since the predecessor in title of the appellant - Mohan was not declared as an exclusive owner of the suit property, the First Appellate Court consequently held that the appellant is not an exclusive owner of the suit property and allowed the appeal filed by respondent Nos.1 and 2 - Kedarmal and Onkarmal. Feeling aggrieved with the findings of the First Appellate Court, this appeal came to be filed.

4. By order dated 08.09.2008, this Court framed the following substantial question of law :

“1) Whether the first appellate Court could have reversed the decree passed by the trial Court without considering some of the material documents in the nature of the plaint and decree passed in the earlier suits, specially when those documents were considered by the trial Court before recording a finding in favour of the appellant ?”

5. Mr. S. B. Mohta, learned counsel for the appellant submitted that the original owner Mohan has filed Regular Civil Suit No.150 of 1978 for declaration wherein, respondent No.1 Kedarmal has filed an affidavit stating that the suit property in that suit i.e. agricultural land fell in the share of Mohan which goes to show that partition has been effected amongst Kedarmal, Onkarmal and Mohan. According to him, the partition in the year

1958 was not a partition. In fact, a Regular Civil Suit No.365 of 1984 filed by Jugalkishor on the basis of the registered partition deed of 1958 was dismissed holding that the partition deed of 1958 was a nominal document. According to him, this aspect has not been considered by the First Appellate Court and erroneously non-suited the appellant-original plaintiff who purchased the suit property fell in the share of Mohan.

6. Mr S. S. Deshpande, learned counsel for the respondents submits that he does not want to press Civil Application No.140 of 2025. He vehemently submitted that the so called partition deed whereby the appellant is claiming that the suit property fell in the share of Mohan has not been appreciated by both the Courts below for not being a registered document. At the most, it can be treated as joint family property. According to him, there are subsequent developments between the brothers. The sum and substance of the argument of the learned counsel for the respondents is that the appellant was a co-owner and injunction cannot be granted against co-owners. He submits that the affidavit filed by Kedarmal and the suit filed by Mohan will not help the appellant and sought rejection of the appeal.

7. Having heard the learned counsels appearing on behalf of the respective parties and having gone through the impugned judgments and documents available on record, it transpires that the appellant purchased the suit property by registered sale-deed dated 07.02.1994. A defence was taken by the respondents before the Trial Court as well as the First Appellate Court that the suit property was already partitioned in the year 1958 by a registered partition deed and therefore, there was no question of partition in the year 1989 by way of the so called agreement/partition deed. However, the Courts below, relying on the judgment in Regular Civil Suit No.365 of 1984 held that the partition of 1958 was a nominal one. The First Appellate Court opined that there is no partition amongst Kedarmal, Onkarmal and Mohan. Therefore, the appellant is not an exclusive owner of the suit property as the nature of the property is joint and Kedarmal, Onkarmal and Mohan are the owners of the suit property alongwith other properties since partition has not been effected. Reliance has been placed on the affidavit filed by Kedarmal in Regular Civil Suit No.150 of 1978 wherein, respondent No.1 Kedarmal stated on oath that the agricultural land which was subject matter of the suit

fell in the share of Mohan. Taking help of this affidavit, it is submitted that the partition has been effected amongst Kedarmal, Onkarmal and Mohan.

8. Be that as it may, the affidavit only refers to the agricultural land which was subject matter of Regular Civil Suit No.150 of 1978, but there is nothing on record to suggest even in that affidavit that the suit property fell in the share of Mohan. So far as the decree passed in Regular Civil Suit No.365 of 1984 is concerned, the First Appellate Court has already taken cognizance and held that the partition of 1958 is a nominal one but this does not necessarily mean that there was partition in the year 1989 as claimed by the appellant of the suit property in the share of Mohan.

9. The position emerges from the record that the suit property is joint property of Kedarmal, Onkarmal and Mohan. At the most, the appellant can step into the shoes of Mohan to claim partition and can be treated as a co-owner to the extent of share which he has purchased from Mohan in the joint family property. It is a settled position of law that injunction cannot be granted

against a co-owner and therefore, no interference is required in the findings of the First Appellate Court. Accordingly, the appeal is **dismissed**.

(M. W. CHANDWANI, J.)

Tambe.