



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

CIVIL APPLICATION [CAS] NO. 292/2024
IN SECOND APPEAL NO. 314/2009.

Mrs. Padmashri Col.Dharansingh Vohra and others.

-VERSUS-

Mrs.Geeta Shyam Laddad and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.V. Vaidya, Advocate for Applicants.
Shri S.S. Joshi, Advocate for Non-applicant No.6 to 8.

CORAM : ROHIT W. JOSHI, J.

DATE : APRIL 21, 2025.

Heard.

2. The legal representatives of original plaintiff have filed the present Second Appeal being aggrieved by the dismissal of Regular Civil Suit No.970/1991, as also dismissal of Regular Civil Appeal preferred by them against the judgment and decree passed by the learned trial Court.

3. The substantive prayer in the plaint filed by the plaintiff was in respect of challenge to

three sale deeds, i.e. sale-deed dated 28.11.1984 executed by plaintiff in favour of defendant no.1, sale-deed dated 10.06.1985 executed by defendant no.1 in favour of defendant nos. 2 to 5 and sale-deed dated 10.09.1991 executed by defendant nos.2 to 5 in favour of defendant nos. 6 to 8. The present Second Appeal came to be admitted vide order dated 26.03.2010 on the following substantial question of law.

“Whether an agreement executed on the same day stating therein as to which property is not sold by plaintiff to defendant could itself be treated as a Deed of Correction ?”

On account of failure on the part of the appellants to serve respondent nos.1 to 5, the appeal came to be dismissed against said respondents.

4. Vide order dated 18.04.2024 this Court has recorded that the relief of challenge to sale-deeds will also be barred against respondent nos. 6 to 8 and appeal will have to be treated as dismissed against all the respondents in view of dismissal of appeal against respondent nos. 1 to 5. The reason given is that unless the earlier sale-

deeds dated 28.11.1984 and 10.06.1985 are set aside, the subsequent sale deed dated 10.09.1991 could not be set aside. It is held that in order to set aside the earlier two sale deeds dated 28.11.1984 and 10.06.1985, respondent nos.1 to 5 will have to be heard and since the appeal is dismissed against them, the substantive prayer regarding challenge to sale deed dated 10.09.1991 could not be entertained.

5. The present appellants have assailed this order dated 18.04.2024 before the Hon'ble Supreme Court vide S.L.P.(Civil) Diary No.24217/2024, which has been summarily dismissed vide order dated 19.07.2024. In this backdrop, the present Civil Application has been filed seeking framing of additional substantial question of law with respect to the prayer for perpetual injunction, as also title of respondent nos. 6 to 8 in view of the deed of correction dated 24.11.1993.

6. Shri Vaidya, learned Counsel for the appellants/applicants has drawn my attention to

the pleadings in the plaint and written statement to point out that the possession of plaintiff /appellants over the portion of suit property identified at Cottage Balhar, ad-measuring 1200 sq. yards is admitted by respondent nos. 6 to 8 in their written statement. He therefore contends that the question of law which arises for consideration is that though a person may not be owner of the property, but, he is entitled to protect his settled possession over the immovable property against every body including the true owner.

7. Shri Joshi, learned Counsel appearing for respondent nos. 6 to 8 has strongly opposed the application contending that when the principal relief regarding challenge to the sale deed is rejected and dismissal of suit with respect of the said prayer has attained finality, the question of granting relief of perpetual injunction, which is consequential or ancillary relief, will not arise. In support of said contention, he has placed strong reliance on the judgment of Hon'ble Supreme Court in the matter of **Padhiyar Prahladi**

Chenaji .vrs. Maniben Jagmalbhai and others reported at [2022] 12 SCC 128. He also contends that the plaint does not disclose any cause of action, qua the prayer for perpetual injunction. He points out that from the plaint that there is no pleading as regards threat to the possession of the plaintiff over the suit property. He also contends that the relief of perpetual injunction was refused by the learned trial Court and despite this, there is no ground in the memorandum of First Appeal (Regular Civil Appeal), which indicates that the plaintiff did not intend to challenge the order, and rather he had given up the challenge to dismissal of the suit qua, the relief of perpetual injunction.

8. I have heard the rival submissions as aforesaid. In my considered opinion the contention raised by Shri Joshi, that the plaint does not disclose any cause of action as regards prayer for perpetual injunction deserves to be accepted. It is well settled that cause of action broadly means a bundle of facts which if undisputed, will give right to the plaintiff to seek relief from the Court. The

facts constituting right, as also the facts constituting infringement of the right are essential ingredients of cause of action. In the present case, there is absolutely no pleading with respect to infringement of right of not to be dispossessed without due process of law. The plaint does not contain any statement that the defendant intended to disturb the possession of the plaintiff. In that view of the matter, the application for framing additional substantial question of law is liable to be rejected.

9. However, at the same time it needs to be mentioned that defendants have categorically admitted possession of plaintiff over the portion of suit property identified at Cottage Balhar. Shri Joshi, learned Counsel contends that both the Courts below have held that the possession over the said property is an illegal possession. In the present case, after filing of the suit, a document dated 24.11.1993 is executed between the defendant nos.2 to 5 and 6 to 8. According to which the portion identified at Balhar Cottage, is

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not a part of sale transaction between defendant nos. 2 to 5 and 6 to 8. The contention of the learned Counsel for the appellant/plaintiff is that by virtue of this document defendant nos. 6 to 8 have admitted that the portion identified at Balhar Cottage is not purchased by them. He draws my attention to the written statement in order to make this point good. However, I am not inclined to comment further in this respect, since I have held that the question of framing additional question does not arise. Needless to mention that in the event there is any threat to the possession of plaintiffs/appellants over Balhar Cottage, it will be open for them to take recourse to appropriate legal remedy in accordance with law, as every act of threat to settled possession offers fresh cause of action.

10. Civil Application is accordingly rejected.

JUDGE