



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

Second Appeal No. 393 of 2006

Name of
appellant
no. 1 deleted
as per order
dtd. 18-1-08

(1) ~~Shantabai D/o Bhagwant Borchate, (Deleted)~~

~~Aged about 54 years, Occupation -
Cultivator, R/o Dahi Post, Taluka -
Malegaon, District Washim.~~

(2) Pandit Shriram Bhoyar,
aged about 45 years,
Occupation – Cultivator,
R/o Bithoda, Bhoyar,
Taluka Mangrulpir,
District – Washim.

(3) Mahadeo Shriram Bhoyar,
aged about 40 years,
Occupation – Cultivator,
R/o Bithoda Bhoyar,
Taluka Mangrulpir,
District – Washim.

... Appellants

- Versus -

Name of
respondent
no. 1 deleted
as per
Registrar's
order dtd.
12-10-2023

(1) ~~Bhagirathi Wd/o Ramrao Bhoyar, (Deleted)~~

~~aged about 74 years,
Occupation – Cultivator,
R/o Ichori, Taluka Mangrulpir,
District – Washim.~~

2. Deokabai Dattatraya Thakare,
aged about 44 years,
Occupation – Cultivator,
R/o Ichori, Taluka Mangrulpir,
District Washim.

... Respondents

Mr. Raunak Kurani, Advocate instructed by Mr. A. B. Patil, Advocate for
the appellants

Ms. A. M. Telange, Advocate instructed by Mr. A. P. Tathod, Advocate for
respondent no. 2

CORAM : ANIL L. PANSARE, J.

DATED : 06-01-2025

ORAL JUDGMENT

Heard.

2. The appeal has been admitted on following substantial question of law.

Whether the lower appellate Court was justified in granting relief of injunction in favour of the plaintiffs/respondents without setting aside the finding of the trial Court that the plaintiffs had not proved their possession in respect of the suit property ?

3. Respondent no. 1 – original plaintiff had filed suit bearing Regular Civil Suit No. 36/2001 against the appellant and other respondents for declaration and permanent injunction. The subject matter of suit is/was agricultural land bearing Gat No. 233 and 229 admeasuring 67 R and 9.33 HR respectively, situated at Village Bithoda, Taluka Mangrulpir, District Washim. The trial Court held that the plaintiff failed to prove ownership as also possession over the suit property. Accordingly, suit came to be dismissed.

4. The first appellate Court, without touching the issue of possession, has granted injunction in favour of the plaintiff.

5. I have gone through the judgment passed by the first appellate Court in Regular Civil Appeal No. 230/2002. The first appellate Court has not even framed issue of possession. It has examined the aspect of ownership and found that the plaintiff is/was owner of the suit property. The finding of the trial Court that plaintiff failed to prove possession has been not dealt with at all. Needless to say that the finding on possession rendered by trial Court has been not overturned. In absence thereof, when the trial Court has given a categorical finding that plaintiff failed to prove possession, the first appellate Court could not have granted injunction without setting aside the finding of the trial Court on the aforesaid point.

6. The first appellate Court was, therefore, not justified in granting relief of injunction in favour of plaintiff – respondent no. 1 without setting aside the finding of the trial Court that the plaintiff has failed to prove his possession in respect of suit property. The substantial question of law is accordingly answered in the negative.

7. Resultantly, the first appellate Court's judgment and order is liable to be quashed and set aside. The appeal is accordingly allowed.

The judgment and order passed by the first appellate Court viz. Additional District Judge, Washim in Regular Civil Appeal No. 230/2002 dated 3-4-2006 is quashed and set aside. Judgment and decree passed by Joint Civil Judge Junior Division, Mangrulpir in Regular Civil Suit No. 36/2001 dated 17-08-2002 is restored.

8. The second appeal is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

wasnik