

SECOND APPEAL NO.489/2016

...VERSUS...

WITH

SECOND APPEAL NO.20/2017

APPELLANTS :

- 1) Smt. Vanita w/o Tukaram Chahande,
Aged about 56 years,
Occupation : Household.
- 2) Tukaram S/o Tulshiram Chahande,
Aged abut 60 years,
Occupation – Agriculture.

Both R/o, C/o Dayaram Chouhan,
Darda Nagar, Tq. & Dist. Yavatmal.

...VERSUS...

RESPONDENTS : 1) Sau. Vimal Dharmadatta Vankar,
(Org. Defts.) Aged about 55 years,
On R.A. Occupation – Household.

2) Dharmadatta Hainath Vankar,
Aged about 60 years,
Occupation – Retired.

Both R/o S.T. Colony, Wadgaon Road,
Yavatmal, Tq. & Dist. Yavatmal.

Mr. A. Shelat, Advocate for appellants in SA No.489/2016
Mr. S.S. Bhalerao, Advocate for respondents in SA No.489/2016
Mr. S.S. Bhalerao, Advocate for appellants in SA No.20/2017
Mr. A. Shelat, Advocate for respondents in SA No.20/2017

CORAM : ROHIT W. JOSHI, J.

DATE : 16/10/2025

ORAL JUDGMENT :

1. The Second Appeal No.489/2016 is filed challenging the judgment and decree dated 16/08/2016 passed by the learned District Judge, Yavatmal in Regular Civil Appeal No.54/2011 inter alia allowing the said appeal and reversing the judgment and decree dated 01/08/2011 passed by the learned 3rd Jt. Civil Judge, Junior Division, Yavamtal in Regular Civil Suit No.17/2005.

2. The appellants are the original defendants and respondents are the original plaintiffs. The parties will be hereinafter referred to as 'plaintiffs and defendants'. The plaintiffs have filed a suit seeking decree

of perpetual injunction against the defendants to the effect that their possession over the suit property which comprises of land bearing Plot No.45 in the layout of Ramabai Ambedkar Mahila Gruh Nirman Co-operative Society Ltd. should not be disturbed without following due process of law and also for damages to the tune of Rs.20,000/- on the ground that construction made by the plaintiffs over the suit property was unlawfully demolished by the defendants.

3. The learned trial Court has dismissed the suit recording a finding that the plaintiffs had failed to prove their possession over the suit property. The other issues are also recorded against the plaintiffs. While deciding the issue with respect to possession, the learned trial Court has taken into consideration certain inconsistencies in the evidence of the plaintiffs with respect to the date on which they were allegedly put in possession of the suit property.

4. The plaintiffs filed first appeal being Regular Civil Appeal No.54/2011, which is allowed by the learned first Appellate Court. The learned first Appellate Court has recorded a categorical finding in paragraph 20 of the judgment that three plots were purchased in the name of the Society vide sale-deed dated 08/07/1996, one of which is the suit plot. It is found that the plaintiff No.1 was a witness and the plaintiff No.1 also produced documentary evidence indicating payment of sale consideration and registration charges to the Society with respect

to the suit plot. The learned first Appellate Court has also referred to letter dated 14/12/2002 (Exh.149), which indicated allotment of the suit plot in favour of plaintiff No.1. The learned first Appellate Court has also referred to cross-examination of defendant No.1 where the fact that 12 plots were purchased by the members of the Society, who had made payments for the same is admitted. As regards physical possession, the learned first Appellate Court has referred to police reports dated 25/01/2005 and 26/01/2005 at Exhs.150 and 151 lodged by the defendant against the plaintiff No.2. In these complaints there is a specific statement regarding encroachment by plaintiff No.2 over the suit property. Based on this, the learned first Appellate Court has found that the possession of the plaintiffs over the suit property could not be disputed.

5. The learned first Appellate Court has recorded finding of fact on appreciation of documentary evidence and has also referred to admission of the defendants indicating physical possession of the plaintiffs. Such findings of facts do not warrant any interference in exercise of jurisdiction under Section 100 of the Code of Civil Procedure.

6. As regards the question of jurisdiction, a contention is raised that allegations against defendant No.1 are not personal but in his capacity as President of Co-operative Society and therefore,

jurisdiction to decide the matter was vested with Co-operative Court under Section 91 of the Maharashtra Cooperative Societies Act and jurisdiction of civil Court is barred. Although in the plaint a reference to defendant No.1 can be correlated as reference to the Society itself, the prayer in the plaint is that defendant No.1 should not forcibly dispossess the plaintiffs from the suit property. The relief sought is clearly personal in nature against defendant No.1 and not against the Society or against defendant No.1 in the capacity of President of the Society. The learned first Appellate Court has also taken due care to direct that the injunction is granted against defendant No.1 in his personal capacity and not in his capacity as office bearer of the Cooperative Society.

7. It will be pertinent to mention that the plaintiffs had also filed a dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960, seeking declaration of ownership against the Co-operative Society and one Chhaya Pawar to whom the suit property is allotted/sold by the Society by executing a sale-deed. In the said dispute an order was passed referring the matter to the learned Civil Court for adjudication. The suit was registered as Regular Civil Suit No.325/2020. Issue therein pertaining to rival claim of ownership over the suit property by the plaintiff No.1 and one Chhaya Pawar as also the aforesaid Society is pending in the said suit. As regards the relief in the civil suit, it is well settled that even rightful owner of immovable

property cannot dispossess a person who is in settled possession of immovable property without following due process of law. The pending dispute, therefore has no bearing on the relief granted by the learned first Appellate Court.

8. In view of the above, the substantial question of law framed in the appeal is answered in favour of the respondents/plaintiffs and against the appellants/defendants. Second Appeal No.489/2016 is, therefore, dismissed.

9. Insofar as Second Appeal No.20/2017 is concerned, the appellants in this appeal who are the original plaintiffs have failed to lead cogent evidence in order to quantify the alleged damages suffered on account of demolition of construction.

10. In view of the aforesaid, the learned first Appellate Court is right in rejecting the prayer clause. Second Appeal No.20/2017 also stands dismissed.

11. No order as to costs.

(ROHIT W. JOSHI, J.)