IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1002 SECOND APPEAL NO. 254 OF 2010
WITH
CIVIL APPLICATION NO. 11239 OF 2009

Shivaji Punda Kajjewad and another
VERSUS
Mahadabai Ram Kajjewad
...
Advocate for Appellant : Ms. Rakhi V. Sundale
Advocate for Respondents : Mr. Vikrant Palsikar
.....

CORAM : **SANJAY A. DESHMUKH, J.**
DATED : **29th OCTOBER, 2026**

PER COURT :-

1. This appeal is preferred by the unsuccessful defendant against the judgment and decree passed by the learned District Judge, Nanded in Regular Civil Appeal No. 31 of 2006, dated 29.04.2009, which was preferred against the judgment and decree passed by the learned Civil Judge, Junior Division, Mukhed in Regular Civil Suit No. 30 of 2004, dated 23.03.2006.

2. The plaintiff came with a case that he is owner of the suit property. She prayed for perpetual injunction that defendant shall not cause obstruction to the House property bearing Gram Panchayat No. 55 admeasuring 16 x 19 ft. situated at village Dapke (G), Tq. Mukhed, District Nanded. The suit was dismissed and the appeal was allowed.

3. Learned advocate for the appellants submitted that the documentary evidence of title of suit property is not produced on record to prove the right in the suit property. Only the assessment extract of Form VIII and tax receipts of the village Panchayat are produced on record. The learned advocate for the appellants further submitted that mere proof of title does not entitle the plaintiff to claim an order of perpetual injunction in respect of the suit property. He, therefore, submitted that the impugned judgment and decree be set aside and the judgment and decree passed by the learned trial court be upheld.

4. Learned advocate for the respondent-plaintiff submitted that possession and title of the plaintiff over the suit property is proved. There is no scope for interference in the impugned judgment and decree as the reasons and findings are legal and correct and no any perversity or illegality is pointed out in the impugned judgment.

5. This court by an order dated 22.06.2010 has formed the following substantial question of law:-

> “Whether the finding of the First Appellate Court regarding the plaintiff's possession is perverse and not based on evidence?”

6. Perused the impugned judgment and the judgment of the trial court alongwith the pleadings, evidence, grounds of objection raised in the appeal and the reasons and findings of both the courts. On perusal of the reasons and findings of the appellate court, this court found that Form VIII has been produced on record. It is judicially noticeable fact that in most of the villages having village Panchayat but no city survey is carried out and hence record is available in the entire Maharashtra as well as entire country. Therefore, persons in possession of a property often do not hold title deed with them. They are having ancestral possessory title. Mostly for open spaces situated in the village are not taxable. Therefore, the assessment extracts are not available with the owners of the open spaces. That does not mean that they have no title to the suit property. In rare cases the evidence of sale deeds etc. are available. Under Section 110 of the Indian Evidence Act, 1872, corresponding to Section 113 of the Bharatiya Sakshya Adhiniyam, 2023, when a person is in possession of a property, he is presumed to be its owner, and the burden lies upon the other side to prove that he/she has title to that property by showing documentary evidence to disprove possessory title of the person in possession of that property.

7. In this case, the plaintiff's possession over the suit property alongwith the house tax receipts and assessment extract of Form VIII are produced on record. However, to prove the possession over the

suit property, nothing is produced on record to show that the suit property belongs to the defendant. The defendant's property is house No.54 and plaintiffs property in house No.55 situated in the same village. The plaintiff has succeeded in proving his legal possession over the suit property and thus having possessory title to the suit property as per Section 110 of Evidence Act. The defendant has no right to cause obstruction to his possession over the suit property.

8. The reasons and the findings of the appellate court in the impugned judgment are legal and correct and there is no illegality and perversity therein. Therefore, this Court is of the view that the plaintiff has succeeded in proving her possession over the suit property. No any substantial question of law arises to form and decide in this appeal. The appeal therefore, deserves to be dismissed. Hence, the following order:-

O R D E R

1. The appeal is dismissed.

2. The civil application No. 11239 of 2009 is also disposed of.

(SANJAY A. DESHMUKH, J.)

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