



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 720 of 2015

**Kisan Vithoba Aakhade (D)
Through LRs. and Others**

...Appellants

Versus

Suresh Tukaram Nerkar

...Respondent

J U D G M E N T

K. VINOD CHANDRAN, J.

The concurrent findings on facts as entered into by the trial court and the first appellate court, to reject the suit filed, was overturned by the High Court in Second Appeal holding, the reading of the document establishing title; of the plaintiff and the findings on possession; of the defendants, perverse.

2. Shri Satyajit A. Desai, learned counsel for the appellants argued that the sale deed exhibited at Ext. 81, was produced by the plaintiff. Though it showed the extent of 150 square metres, actually as per the revenue records produced by the defendants, as on the date of sale deed the vendor of the plaintiff had possession only of 109.70 square metres. The balance portion was an open space which was in the possession of the deceased 1st appellant, the 8th defendant in the suit. The revenue records were corrected after the written statement was filed by the defendants. Despite assertion of possession by the plaintiff, in the Commission taken out by the plaintiff it was found with the 9th defendant. Even then the plaintiff did not seek for recovery of possession. It is argued that there was no question of law arising in the Second Appeal and the High Court erred in reversing the concurrent finding on facts of the trial court and the first appellate court.

3. Shri Gagan Sanghi, learned counsel for the respondent No. 1/ plaintiff read to us the reliefs sought in the plaint, which was a declaration of ownership and possession with consequential injunction. The plaintiff was in possession of the entire property wherein admittedly there was a building. The disputed land was lying contiguous to the plot in which the building was constructed. The defendants were dumping waste in the property and keeping manure thereon, which was objected to. On objections raised there was a threat levelled and hence the suit was filed. The mere finding of manure and waste on the property cannot lead to a finding of possession. The appellate court wrongly found that the title deed showed only a lower extent which was found to be a mistake of fact amounting to perversity by the High Court.

4. The plaint was filed for declaration of ownership and possession and consequential injunction from

interference with the open space, lying adjacent to the residential building. The property as covered by Ext. 81 title deed was more fully described in the 1st paragraph of the plaint, for which the declaration was sought insofar as the ownership and possession as also consequential permanent injunction against the defendants from interfering with the ownership and possession of the plaintiff. The plaint averments clearly indicate that the suit was necessitated since the defendants failed to give heed to the objections raised by the plaintiff against the defendants using the property to keep manure and dump waste.

5. The suit was compromised insofar as the defendants 1 to 7 are concerned. Defendants 8 to 12 went to trial but with only a written objection to the IA for temporary injunction by the 9th defendant. On a query being put to the learned counsel appearing for the appellants, it was asserted that the 8th defendant

adopted the objection filed by the 9th defendant to the I.A praying temporary injunction, which was adopted as the written statement of the 9th defendant also. However, we notice from the judgment of the trial court itself that the 8th defendant failed to file a written statement, and the 9th defendant alone contested the matter and adopted the objection filed to the IA praying injunction, as the 9th defendant's written statement. Defendants 10 to 12 remained ex-parte. We are surprised with the submission made by the learned counsel for the appellants to the specific query made by us, clearly contrary to the records. We find that the suit has not been contested by the 8th defendant or the defendants 10 to 12 and they have chosen to file an appeal from the order in second appeal, along with the 9th defendant.

6. Be that as it may, it was the contention of the 9th defendant that the property was his ancestral property, and he had been using it as a dung heap and for waste

disposal while also claiming common use as per an oral partition of 1974. The trial court found that due to the discrepancy in the revenue records; the correction regarding the extent having been made during the pendency of the suit, no reliance could be placed on the same. It was hence found that the plaintiff could not establish his title either over 'ABCD', marked in the map wherein the building existed and also 'PCDF', the adjacent open plot which was the bone of contention between the plaintiff and the 9th defendant. The first appellate court went further to find that since there was no claim for recovery of possession, the suit has to be dismissed under Section 34 of the Specific Relief Act, 1963, specifically the declaratory relief prayed for, being also a matter of discretion. It was also found by the first appellate court that the sale deed was only with respect to 109.70 square metres.

7. The plaint was accompanied with a map showing the two different extents lying contiguous within 'ABCD' the disputed open plot lying adjacent demarcated as 'PCDF'. There was no dispute raised as against the plot in which there was a residential building, even by the 9th defendant who alone contested the suit. There was no cause for the trial court to find the title of entire 'ABCD' to be not established especially when there was a title deed. The Commissioner has given specific measurements of the property and without a finding that the building was not constructed at least in the 109.70 square metres, the trial court ought not to have declined the relief of declaration with respect to the entire 'ABCD'.

8. Insofar as the land indicated as 'PCDF', the trial court entered a finding based on the Commissioner's report. The Commissioner's report only spoke of the manure kept and waste dumped in the property; which according to us cannot be a valid ground to find

possession, especially when the case of the plaintiff was that waste is being thrown in the property and manure kept by the 9th defendant, without permission and despite specific objection raised against such acts.

9. We also see from the Judgment of the trial court that the 9th defendant had claimed that in an oral partition by the sons and brothers of the father of the vendor of the plaintiff, the open land was kept in common. This claim was taken without any pleading or evidence regarding his relationship with the vendors family, who sold the property which devolved on him. The vendor of the plaintiff was the son of the original owner whose brothers and sons are said to have entered into an oral partnership in the year 1971. But for the bland assertions of partition and common use, nothing is produced to establish the same nor is anybody examined to substantiate the contentions. Without any evidence regarding the oral partition and without establishing the connection with

such partition or relationship with the vendor or his father, who was the original owner, the 9th defendant could not have raised a valid claim of possession-in-common, of the property.

10. The High Court in the second appeal looked into the sale deed and found that it conveyed 150 square metres of property which was comprised in the two extents indicated separately in the map and together in the plaint description. The High Court also found that the mere reason of the manure and waste having been found in the property, cannot lead to a finding of possession; which finding is perverse. We are in perfect agreement with the findings of the High Court.

11. The revenue records produced by the plaintiff showed the corrected area as per the sale deed. Merely because the correction was done in the course of the suit is no reason to disbelieve the public record maintained. The written submissions indicate that the application for

correction was filed much before the suit was filed and the documents were produced in first appeal by an application under Order 41 Rule 27 of the Civil Procedure Code, which however was rejected. Even *dehors* such proof the latest revenue records having shown the actual extent, it was for the defendants to disprove the same. The trial court ought not to have suspected the sanctity of the correction, unless it was disproved.

12. The first appellate court's finding on Section 34 of the Specific Relief Act cannot be sustained since the 9th defendant did not establish possession. PW2, known to both parties, deposed that the vendor of the plaintiff used to tie his cattle in the property. It was also deposed that the 9th defendant used to keep manure and dump waste in the open plot, since the plaintiff was not residing therein. Hence, the plaintiff's vendor's possession is

established and the plea of his common use set up by the 9th defendant is demolished.

13. We cannot but reiterate that the deceased 1st appellant, now represented by the 2nd appellant and the appellants 3 to 5 never contested the suit and they cannot file an appeal and prosecute it based on the contentions of the 9th defendant though an identity of interest is claimed by the 9th defendant.

14. For all the above reasons, we find absolutely no merit in the Appeal and the same stands dismissed.

15. Pending applications, if any, shall stand disposed of.

..... J.
(Prashant Kumar Mishra)

..... J.
(K. Vinod Chandran)

**New Delhi;
September 09, 2025.**