



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

SECOND APPEAL NO.131 OF 2004

1. Smt.Daulatabai Shahabuddin Sattani,
aged about 67 years, occupation – Nil, (dead)
thr.LRs

2. Shri Saddrudin Shahabuddin Sattani,
aged 40 years, occupation : business,

both r/o Itwara Chouk,
Mahadeopura, Wardha
Taluka and district Wardha.

**Appellant No.1:Smt. Daulatabai
Shahabuddin Sattani since dead
through her legal heirs:**

1(a). Smt. Mallika w/o Amir Ali
Manji, age-62 years, occupation – Nil,
r/o flat No.302, 3rd floor,
Royal home, old kattal mandi,
Nampalli, Hyderabad.

1(b). Smt.Hamida w/o Barkat Ali
Dhammani, age – 60 years,
occupation – Nil, r/o Karimabad
society, Opp.Poonam Chambers, Byramji Town,
Nagpur.

1(c). Smt.Dilshad Samsuddin
Damani, age – 56 years,
Occ.– Nil, r/o Prafulla Mishra
complex, Bakratunda-B3,

Gandhi marg, Angul,
Odisha-759 122. Appellants.

:: V E R S U S ::

Smt.Kulshambai wd/o Allibhai Ajani,
aged 67 years, occ-Nil,
r/o Itwara Chouk, Mahadeopura,
Wardha, taluka and district Wardha. Respondent.

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Shri R.M.Vaidya, Counsel Appellants.

Shri M.R.Deshpande, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/12/2024

PRONOUNCED ON : 20/12/2024

JUDGMENT

1. By this appeal, judgments and decrees dated 20.12.2003 passed by learned 3rd Ad Hoc Additional District Judge, Wardha in RCA No.109/1997 and 4.10.1997 passed by learned 2nd Joint Civil Judge Junior Division, Wardha in RCS No.164/1997 are under challenge.

2. The parties hereinafter are referred as per their original nomenclature.

3. The respondent herein is the original plaintiff who filed a suit for permanent and mandatory injunction restraining the defendants from demolishing the northern wall of house and from alienating the suit house. The plaintiff is the owner of nazul plot No.215 and in nazul sheet No.14 of mouza Wardha admeasuring 417.01 square meters. The house of the defendants is on the western side of the plot along with one block on the southern side of the said plot wherein the son of the plaintiff is running shop. The original owner of the suit property was husband of the plaintiff who died on 6.2.1981. After death of her husband, she along with her sons inherited the suit property. It is specific contention of the plaintiff that her husband during his life time has never executed any Will in favour of his son Salim and, therefore, Salim has no right to dispose of the said property by registered sale deed dated 16.5.1988. By virtue of decree passed in RCS No.92/75, her husband was declared to be owner of nazul plot no.215. She first time came to know about the execution of the sale deed

dated 16.5.1988 on 16.6.1997. She claimed that she is the owner and sale deed is not binding on her and, therefore, the defendants be restrained from taking possession of any area and from alienating any portion of the suit property. The suit property is still in the name of the deceased. The defendants are neighbours and started demolishing some portion of the compound wall on 24.5.1997 on northern side and, therefore, she constrained to file the suit.

4. The suit is contested by the defendants by filing written statement and denied the contentions of the plaintiff. As per the defendants, the defendant No.1 had purchased the plot situated in ward No.19, old nazul block No.14 east-west on northern side 25 feet, east-southern side 24 feet, north-west side 40.6 feet and eastern side 24 feet with a corner having length 2.9 feet. Total area 1017 square feet having boundaries as under:

Towards East :- house of Dulichand,

Towards West :- house of Shri Ajani,

Towards North :- house of vendor.

5. The plot was purchased by the defendant No.1 by sale deed dated 16.5.1998 for consideration amount of Rs.19,000/- vide registered sale deed dated 16.5.1988 from Salim Alibhai Ajani. Salim acquired the title on the basis of the Will executed by his father. His father bequeathed the entire property to his legal heirs and they have purchased the same from Salim. Thus, they became the owner of the suit property and ownership of the plaintiff was denied and prayed for dismissal of the suit.

6. Learned Civil Judge Junior Division, Wardha recorded the evidence and observed that the fact of execution of the Will in favour of Salim itself is not proved and, therefore, the sale deed executed by Salim is not valid. Thus, the defendants failed to prove the ownership over the suit property. The evidence on record sufficiently shows the suit property is in

possession of the plaintiff and granted injunction in favour of the plaintiff by decreeing the suit.

7. The decree passed in the RCS was challenged by the defendants by preferring Civil Appeal No.109/1997 which was dismissed by the first appellate court by observing that there is nothing put by the side of the defendants to show that they are owner of the suit property. In fact, execution of the Will itself is not proved and, therefore, the sale deed executed by Salim claiming his ownership on the basis of the Will is not established and, therefore, the said sale deed is not valid and not binding on the plaintiff and confirmed the judgment and decree passed by learned Civil Judge Junior Division, Wardha.

8. Thus, the judgments passed by learned Civil Judge Junior Division, Wardha and first appellate court, Wardha are under challenge in the present second appeal.

9. The following substantial questions of law are framed:

1. Whether the suit for simplicitor injunction is maintainable?
2. Whether the suit is barred for non-joinder of necessary parties?
3. Whether the suit is barred by law of limitation?

10. Heard learned counsel Shri R.M.Vaidya for the defendants. He submitted that the suit is filed in the year 1997. Whereas, the defendants are in possession of the suit property from 16.5.1988. Burden is wrongly shifted on the defendants without framing an issue of ownership. The manner, in which the trial was conducted, prejudice is caused to the interest of the respondent. The suit is barred by limitation of non-joiner of necessary party. The vendor of the suit property from whom the defendants have purchased the property was not made as a necessary party to the suit. In a suit, dwelling house is not mentioned as subject-matter of suit. The trial court and the first appellate court considered the date of knowledge to hold that the suit is within the limitation. In

fact, the suit is not filed within the limitation. For all above these grounds, the judgments and decrees passed by learned Civil Judge Junior Division and the first appellate court deserve to be quashed and set aside.

11. *Per contra*, learned counsel Shri M.R.Deshpande for the plaintiff submitted that there is consistent finding of the trial court as well as the first appellate court and it is well settled that when there is a concurrent finding of fact which is usually binding on this court while hearing the second appeals under Section 100 of the CPC. The plaintiff was not party to the sale deed. The original owner Alibhai has two wives. Originally, the entire plot was given to deceased Alibhai Ajani who had three sons from the plaintiff. After the death of Alibhai, they succeeded to the entire property and, therefore, Salim has no right to execute the sale deed. The Will executed in his favour is not proved by the defendants. Thus, the possession as well as the ownership of the plaintiff over the

suit property is established and, therefore, no interference is called for.

12. In support of his contentions, learned counsel for the plaintiff placed reliance on following decision:

S.K.Golam Lalchand vs. Nandu Lal Shaw alias Nand Lal Keshri alias Nandu Lal Bayes and ors, reported in 2024 SCC OnLine SC 2456.

13. Whereas, learned counsel for the defendants placed reliance on following decision:

1. Common Piru Chaudhari vs. Berubai Chendu Redhiwale and ors, reported in 2017(5) Mh.L.J.138;
2. Jogendra Nath Mondal and ors vs. Adhar Chandra Mondal, reported in 1950 SCC OnLine Cal 219, and
3. Anathula Sudhakar vs. P.Buchi Reddy (dead) by LRs and ors, reported in (2008)4 SCC 594.

14. Perusal of the evidence adduced by the parties, reveals that the defendants began the case by adducing their evidence. Defendant No.1 examined himself vide Exh.51 and deposed as per his pleading that he became the owner of the suit property

10

on the basis of the sale deed executed in his favour by Salim.

Said Salim got the title on the basis of Will executed in his favour by his father Alibhai. The cross examination shows that his residential house is towards West of the plaintiff's house.

He further admitted that towards East of the suit property son of the plaintiff runs his video shop and towards South there is plaintiff's residential house and towards North there is house of Dulichand. It further came in the evidence that the plaintiff filed the complaint against them on 24.9.1997 as they were demolishing the compound wall of the suit house. He further admitted that the police gave them understanding not to demolish the wall situated on the suit property.

15. The evidence of DW2 Mansur Ali, who is the neighbour, states that the disputed wall having height of 10 feet and is surrounding the entire plot. Thus, as far as evidence of DW2 is concerned, the same is as to the existence of the wall.

16. DW3 Sheikh Gaffar was working as petition writer at the relevant time who stated that he has reduced into writing

11

the recital of the sale deed. During his cross examination, he admitted that while reducing into writing the recital of the sale deed, the descriptions as to the plot number, house number, survey number, plot number and layout number are not mentioned in Exh.59 which is the extract of register of the sale deed.

17. Defendant No.4 Abdul, stated that he was called when the deceased has shown his willingness to execute the Will. The wife of Ali came to call him. At the relevant time, testator Ali was sick and in his presence the Will was written. His evidence shows that prior to execution of the sale deed the plaintiff and sons were owners and possessors of the property. Thus, the evidence of DW4 clearly shows that the suit property was in the possession of the plaintiff.

18. The plaintiff has also adduced the evidence by examining Siraj who as per his pleading in the plaint. The evidence further shows that his father was having two wives. The first wife was not alive. From the first wife, his father was

12

having one son Rajjak Ali and one daughter Daulatibai. They both are not alive. After the death of the first wife, his father got married with the plaintiff. All properties were self acquired properties of his father. Thus, his evidence also shows that the suit property was in the possession of the plaintiff and her sons and the defendants came into possession of the suit properties allegedly after execution of the Sale Deed.

19. The entire case of the defendants rested on the basis of sale deed which is executed by Salim with the averments that he hold the title of the suit property on the basis of the Will executed in his favour.

20. Admittedly, the original Will or certified copy of the Will is not produced before the court. The photocopy of the Will was produced and there is no application to treat it as a secondary evidence. Whether the Will executed in favour of Salim is proved by the defendants to prove the ownership?

13

21. The defendants have come with a case that their vendor Salim got right to dispose of the property as the Will was executed in his favour. PW1 Siraj at Exh.69 testified that his father has not executed any Will in favour of Salim. Thus, the defendants claimed a right over the suit property on the basis of the sale deed which is executed by Salim, their vendor. Admittedly, the Will is not produced before the court. Defendants have examined DW4 Abdul vide Exh.61 who acted as attesting witness at the time of execution of the Will. According to his evidence, he went to the house of Alibhai, the testator on receiving the call. In his presence Alibhai himself wrote the Will, read over its contents to them and, thereafter, he and Alibhai signed on the Will. Alibhai bequeathed the open space to Salim in the year 1980. The evidence of appellant No.2 Saddrudin shows that Salim has shown him Will dated 12.11.1980. The said Will is in the possession of Salim. He admitted that there were no contents regarding the partition in the Will. The Will was not produced though they

14

were aware that it is in the possession of salim. The contents of the documents were neither produced nor proved. The evidence further shows that till recording the evidence, the suit property was shown in the name of deceased. There was no attempt by the defendants to enter their names in the City Survey Record despite the sale deed was executed in their favour.

22. As far as the legal position in the matter of proof of the Will is concerned, it is well settled that Will is to be proved like any other documents. The party propounding a Will or otherwise making a claim under a Will is no doubt seeking to prove a document and, in deciding how it is to be proved. Sections 67 and 68 of the Evidence Act are relevant.

Under Section 67, if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

15

Under Sections 45 and 47 of the Evidence Act, the opinions of experts and of persons acquainted with the handwriting of the person concerned are relevant.

Section 68 of the said Act, deals with Proof of execution of document required by law to be attested and it provides that such documents shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.

These provisions prescribes the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law.

23. Sections 59 and 63 of the Indian Succession Act are also relevant.

Section 59 deals with the situation that every person of sound mind not being a minor may dispose of property by Will.

16

Section 63 requires that the testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction and the signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. The said Section also requires that the Will shall be attested by two or more persons. The Will is to be proved like the other documents.

24. It is well settled that the court who examines the proof of Will is also duty bound to see whether disposition under the Will is natural. The duty is cast upon the propounder to remove all doubts regarding suspicious circumstances. A Will is solemn document by which a dead man entrusts to the living for carrying out of his wishes. It is an instrument by which a person makes a disposition of his property to take effect after his death.

25. The evidence of DW1 states vide Exh.51 that after execution of the sale deed by Salim, possession was handed over to him and since then it has been in his possession. Whereas, cross examination shows that the plaintiff did not allow him to enter the plot and, therefore, he stated approximate area of the plot. There is only one way to the plot i.e. from the house of the plaintiff till filing of the suit. He has not taken any steps for recording his name to record of rights.

26. DW2 Mansur Ali corroborates the version of DW1 during chief examination. But he admitted that to approach the suit plot there is door from video shop. He is unable to tell whether there is possession of the respondent or not.

27. Thus, as far as the title is concerned, defendants failed to prove that Salim got any right to transfer the property as the Will is not proved. Certified copy of the judgment in RCS No.92/75 between the deceased and his sons was decided in favour of deceased Alibhai. The said finding was not challenged. So, it is proved that the deceased was owner of

18

the house. Thus, the possession and ownership of Salim over the suit property which was allegedly sold out to the defendants is not established by the defendants. There is concurrent finding of the trial court as well as the first appellate court holding title as well as the possession of the plaintiff over the suit property.

28. Learned counsel for the defendants submitted that the suit for simplicitor injunction is not maintainable. In support of his contentions, he placed reliance on the decision of the Hon'ble Apex Court in the case of **Anathula Sudhakar vs. P.Buchi Reddy (dead) by LRs and ors**¹ wherein the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title

1 (2008)4 SCC 594

19

is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

20

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved

21

is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction.

But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

29. Thus, in a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he

22

was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff can prove physical or lawful possession either by the family members.

30. As far as the vacant site is concerned, the principle is that possession follows tittle. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of *de jure* possession even though the suit is for a mere injunction.

31. Now, coming to the submission made by learned counsel for the defendants regarding maintainability of the suit for mere injunction without seeking cancellation of the sale deed executed in favour of the defendant No.1, it is relevant to

23

note that Section 38 of the Specific Relief Act deals with grant of perpetual injunction which may be granted to the plaintiff when the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, and where the invasion is such that compensation in money would not afford adequate relief and where the injunction is necessary to prevent a multiplicity of judicial proceedings.

32. It is submitted by learned counsel for the defendants that the defendants got title on the basis of the sale deed which is executed by Salim. Said Salim got the title on the basis of the Will. Whether the sale deed executed in favour of defendant No.1 by Salim is a valid document? Section 31 of the Specific Relief Act refers to both void and voidable documents. It provides for discretionary relief. When a document is valid, no question arises for it when the document is *void ab inito*. The decree for setting the aside the same would not be necessary as the same is *non est*.

24

33. The Hon'ble Apex Court, in the case of **Prem Singh and ors vs. Birbal and ors**², in paragraph Nos.15 and 16 observed that:

“15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable documents. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.”

34. If the plaintiff is in possession of a property, he may file a suit for declaration or an injunction.

35. In the present case, the vendor of the defendants claimed right of ownership on the basis of the Will. The said Will was not produced. Thus, the right of the vendor to transfer the property is not established. Learned Judge in RCS No.92/75 declared the deceased as owner of the property

2 (2006)5 SCC 353

wherein the subject matter was not the suit house but the plot. The defendants possession over the suit property is not established.

36. As observed, the right of the vendor to execute the sale deed itself is not established. The defendants' theory of possession over the suit plot is based on the source of title which is sale deed dated 16.5.1988. The executant of the sale deed Salim is the son of the plaintiff. The right of said Salim is on the basis of the Will. The Will was also treated by the defendants as partition deed. The deceased distributed the property during his life time. Defendant No.2 first time during evidence stated that the Will is the document of partition. The original Will was not brought on record and photocopy of the same was filed on record. Thus, the Will is not proved by the defendants. Thus, execution of the sale deed on the basis of the said Will appears to be void document as ownership of the vendor itself is not established.

26

37. The law will come to the aid of a person if he establishes possession. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted.

38. The defendants have also raised issue of limitation and submitted that the suit is not within the limitation.

39. The limitation for filing the suit is of three years. The plaintiff has claimed that cause of action arose for the instant suit on 24.5.1997 when the defendants started demolishing the plaintiff's wall and, therefore, the suit is within the limitation. The defendants have challenged the maintainability of the suit on the ground that the suit is not without limitation. The contention of the plaintiff is that RCS No.92/1975 was decided on 11.8.1980. The other defendants in the suit was Nasurala. In this litigation, the subject matter of the suit was plot No.215, nazul plot No.1, ward No.3 which is the same property involved in the present suit. In the said

27

proceeding, it was held that Alibhai is the exclusive owner of the suit property and possession and ownership of Alibhai was upheld.

40. As already observed, on the basis of the Will, Salim became the owner of the suit property which he sold to the defendants. The defendants have admitted in their evidence that they were demolishing the wall of the suit property claiming to be the owner of the suit property. This act on the part of the defendants without having possession is certainly contravention of due procedure of law. Thus, demolishing the wall by the defendants as claimed by the plaintiff was on 24.5.1997 and the suit was filed on 24.5.1997 and, therefore, the suit is within the limitation.

41. The another ground raised, that the suit is not maintainable for non-joinder of necessary parties, as far as the objection of the non-joinder of necessary party under Order I Rule 9 of the Civil Procedure Code is concerned, the legal representatives of Raja Bali are alive they are interested in the

28

suit property and, therefore, they are necessary party. In a suit, if the necessary party is not added, such suit shall be dismissed not for non-joinder or mis-joinder of parties but for no effective order can be passed or no relief can be granted. Necessary party is one without whom no order can be made effectively. A necessary party held is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceeding.

42. As already observed that, Alibhai was declared to be lawful owner of the suit property by judgment and decree passed in RCC No.92/1975, Raja Bali and Nasurala had no concern with the property and said Alibhai was held to be exclusive owner of the said property and, therefore, the contention that Raja Bali and his legal representatives are necessary parties is not sustainable.

43. The trial court as well as the first appellate court both have considered the evidence and held that the possession

over the suit property is of a plaintiff. The defendants claimed the possession on the basis of the sale deed which is executed by their vendor on the basis of the Will and the said Will is not proved. The evidence on record further shows that there was no other way to approach to the property except from the house of the plaintiff. Defendants further admitted that they were demolishing the said wall and the police complaint was registered against them. Thus, without following a due procedure of law an attempt was made by the defendants to demolish the wall which is considered by the trial court as well as the first appellate court.

44. The scope of second appeal in view of Section 100 of the Civil Procedure Code is very limited. In numerous judgments, it has been held that concurrent finding of fact of the trial court and the first appellate cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of the Code. It is not the principal of law that where the High Court finds that if there is a concurrent finding of two

30

courts, such finding becomes unassailable in the second appeal. However, it has been laid down in several decisions that concurrent findings of fact is usually binding on this court while hearing the second appeals under the said Code. It is trite law that in order to record any findings on facts, the trial court is required to appreciate the entire evidence oral as well as documentary in the light of the pleading of the parties. The appellate court has jurisdiction to appreciate the evidence while hearing the first appeals either affirming the findings of the trial court or reversing the same.

45. In the case of **Kondiba Dagadu Kadam vs. Savitkibai Sopan Gujar and ors**³, the Hon'ble Apex Court held that from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court.

46. In the case of **State of Rajasthan vs. Shiv Dayal**⁴, the Hon'ble Apex Court held that a concurrent finding of the fact is

3 (1999)3 SCC 722

4 (2019)8 SCC 636

31

binding unless it is pointed out that it was recorded *de hors* the pleadings or it was based on no evidence or based on misreading of the material on records and documents. The Hon'ble Apex Court held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

47. In the present case, both courts i.e. the trial court and the first appellate court on the basis of the evidence gave concurrent finding that it is the plaintiff who is in the possession of the suit property and the defendants have interfered with the peaceful possession and thereby plaintiff is entitled for the relief of injunction. Even, the decision in the case of **Anathula Sudhakar vs. P Buchi Reddy (Dead) By Lrs &**

32

ors⁵ as relied upon by the defendants deals with the situation wherein it is held that where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

48. Here, in the present case, there is merely an interference with the plaintiff's lawful possession and, therefore, the suit for simpliciter injunction is maintainable which is rightfully considered by the trial court as well as the first appellate court and, therefore, the substantial question of law framed that, whether the suit for simplicitor injunction is maintainable, is answered in affirmative. Another substantial

33

question of law framed, that whether the suit is barred by law of limitation, is answered in negative.

49. The appeal being devoid of merits and liable to be dismissed, the same is dismissed.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!