

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

901 SECOND APPEAL NO.166 OF 2013

**NARHARI RAGHOJI SADAVARTE
VERSUS
RANGNATH MAHADU SADAVARTE AND ANR**

...
Advocate for Appellant : Mr. C.V. Korhalkar h/f. Mr. R.N. Chavan
...

**CORAM : ARUN R. PEDNEKER, J.
Dated : 11/07/2023**

ORDER :

1. By the present second appeal, the appellant/original plaintiff is challenging the judgment and order dated 26.7.2010 in Regular Civil Appeal No. 32/2010 passed by the learned District Judge-1, Basmatnagar, by which the judgment and decree dated 26.7.2010 in Regular Civil Suit No. 139/2009 passed by the learned Civil Judge, Senior Division, Basmatnagar is set aside and Regular Civil Suit No. 139/2009 came to be dismissed.
2. Brief facts, giving rise to the present second appeal, can be summarized as under :-

The plaintiff and defendant Nos. 1 and 2 are related to each other and resident of village Sunegaon, Taluka Basmat, District Hingoli. Plaintiff is the owner of the suit property i.e. plot and house No. 140 of village Sunegaon. It is the case of the plaintiff that the plaintiff has obtained the suit property from Gram Panchayat under the scheme of State of Maharashtra and since the allotment of the suit property, the plaintiff is in possession of the suit property as owner of it. The plaintiff has constructed a hut on the suit property and he keeps agricultural implements and tie cattle on the suit property. It is the case of the plaintiff that defendant Nos.

1 and 2 are not concerned in any manner with the suit property and they have committed encroachment on the suit property.

3. It is the case of the plaintiff that on 12.7.2009 the plaintiff had been to another village and on that day, defendant No. 1 made encroachment in 30 x 30 ft. area from the east side of the suit property. On the same day, defendant No. 2 made the encroachment on the suit property on 15 x 15 ft. area from north side. Both the defendants have made construction of loose bricks and the defendant No. 1 has also dug a ditch for latrine. The plaintiff requested the defendant to remove their encroachment, but since they refused, the plaintiff was constrained to file a suit for declaration of his title over the suit property and also for the decree for possession of encroached portion.

4. The defendant Nos. 1 and 2 contested the suit by filing written statement. They denied that the suit property is allotted to the plaintiff by Gram Panchayat under the scheme of State of Maharashtra. It is contended by the defendants that the plaintiff was never the owner and possessor of suit property. It is contended by the defendant Nos. 1 and 2 that defendant Nos. 1 and 2 are in possession of the suit property since last 15 to 16 years. It is further contended by the defendants that the plaintiff has got prepared bogus record in his name in respect of plot No. 140 in collusion with Gram Sevak and there is no record available with the Gram Panchayat as to how the name of the plaintiff is recorded to plot No. 140. It is contended that the plaintiff gave imaginary cause of action dated 12.7.2009. It is specific case of the defendants that the plots are situated to the east side of village Sunegaon in Gat No. 43 which was owned by Vishwambhar Mahadji Kale and he had laid the plots in Gat No. 43 before 17 to 18 years and the

father of the defendant Nos. 1 and 2 have purchased two plots admeasuring 30 x 33 ft. and 30 x 66 ft. as per the oral agreement and they obtained possession of those plots from Vishwambhar and their possession is continued till the date of filing of written statement. Therefore, the defendant Nos. 1 and 2 prayed for dismissal of the suit.

5. Considering the rival contentions, the Trial Court has formulated the following issues and recorded answers against each issue as under :-

मुद्दे	निर्णय
०१. वादीने पुराव्याने सिध्द केले का की वादमिळकतीचे ... मालक असुन ताबेदार आहेत ?	मालकीच्या हद्दीपर्यंत नकारार्थी ... मालकीच्या हद्दीपर्यंत होकारार्थी
०२. वादीने पुराव्याने सिध्द केले का की, प्रतिवादीने ... पुर्वेकडून त्याच्या प्लॉटवर बांधकाम करून अतिक्रमण केले ?	होकारार्थी.
०३. प्रतिवादीने पुराव्याने सिध्द केले का की प्रतिवादीने ... खोटेपणाने त्याचे नाव रेकॉर्डमध्ये खोडखाड करून फेरफार करून घेतले ?	नकारार्थी.
०४. प्रतिवादीने पुराव्याने सिध्द केले का की ... वादमिळकत ही त्यांच्या वडीलांपासुन आजपर्यंत त्यांच्या ताब्यात आहे ?	नकारार्थी.
०५. प्रतिवादीने पुराव्याने सिध्द केले का की त्यांच्या ... वडीलांनी प्रत्येकी ३० x ३६ असे दोन प्लॉट विकत घेतले आणि वडीलांच्या मरणानंतर त्यांच्या ताब्यात ते प्लॉट आहेत ?	नकारार्थी
०६. प्रतिवादीने पुराव्याने सिध्द केले का की ते ... वादमिळकतीचे adverse possession ने मालक आहेत ?	नकारार्थी.
०७ वादी जाहीरनामा मिळवुन घेण्यास पात्र आहे का ?	मालकीसाठी नकारार्थी ताब्यासाठी होकारार्थी

०८. वादमिळकतीवरील अतिक्रमण काढुन त्याचा ताबा ... होकारार्थी.
मिळवण्यास वादी पात्र आहे का ?
०९. काय आदेश ? ... अंतिम आदेशाप्रमाणे.

6. The Trial Court held that the plaintiff has failed to prove his title over the suit property, however, the plaintiff has proved his possession over the suit property and defendants have made encroachment over the suit property and the Trial Court, thus, passed the decree of possession of encroached portion in favour of the plaintiff. The defendant Nos. 1 and 2 challenged the judgment and decree passed by the Trial Court before the Appellate Court, however, there was no cross objection filed by the Plaintiff as regards the finding of title of the plaintiff over the suit property. The Appellate Court formulated following points for determination, which reads thus :-

Points		Findings
1.	Whether the plaintiff has proved his possessory title to the suit property ?	In the negative.
2.	Whether the plaintiff has further proved that defendant no. 1 and 2 have made encroachment over the suit property ?	In the negative.
3.	Whether plaintiff is entitled to a possession of suit property from defendant no. 1 & 2 ?	In the negative.
4.	Whether any interference is called for in impugned judgment and decree ?	In the affirmative.
5.	What order ?	As per final order.
7.	The Appellate Court, on consideration of material on record, held that	

since title of the plaintiff is not proved, the possession is claimed on the basis of previous possession. The Appellate Court thereafter examined whether plaintiff has proved his possessory title. On examination of the evidence, the Appellate Court noted that the witnesses of the plaintiff, PW 2 Shobha Ingole, Gram Sevika has admitted that when she took charge of the post of Gram Sevak, at that time, defendant Nos. 1 and 2 were in possession of the suit property and further admitted that plot No. 140 is a private property and as such, is not the Gavthan on which the Government allotment of land could have taken place. The Appellate Court further noticed that Gram Sevak took charge in the year 2005 and according to Gram Sevak, at the relevant time, the defendant Nos. 1 and 2 were in possession of the suit property. Thus, the Appellate Court after going through the evidence of PW 2 has held that the suit property was in possession of the defendants prior to the year 2005. The Appellate Court further noticed that though it is the contention of the plaintiff that the suit plot is allotted to him under the Government scheme, there is no documentary evidence to prove the said fact. Per contra, PW 3 Narayan Khandare, who is the owner of adjacent plot owner, in his cross examination admitted that the suit property is owned by Vishwambhar Mahadji. Vishwambhar has not executed any sale deed in favour of anybody. However, it is the case of the defendant that their father has purchased the suit property from Vishwambhar Mahadji.

8. The Appellate Court further observed that the suit property was in possession of the defendants prior to 2005 and that the entry of Namuna 8 in the name of plaintiff is of the year 2008-09 and tax receipts are also from 2009. The Appellate Court held that Namuna No. 8 and tax receipts are not

sufficient to hold the possession of the plaintiff over the suit property. Since the Appellate Court held that the suit property is in possession of defendant Nos. 1 and 2 for last more than 15 to 16 years, under these circumstances, it was not possible to presume the possessory title of the plaintiff over the suit property. The defendants have examined DW 3 Vishwambhar Kale, the owner of Gat No. 43. He deposed that father of defendant Nos. 1 and 2 have purchased the suit property from him, but without sale deed. On examination of evidence, the Appellate Court, thus, held that the plaintiff has not lead sufficient evidence to show that the plaintiff is in exclusive possession of the suit property. It was not proved that he was dispossessed from the suit property. Thus, the plaintiff has failed to prove that the defendant Nos. 1 and 2 have made encroachment and plaintiff is not entitled for the possession of the suit property from the defendants. Thus, the Appellate Court set aside the judgment and decree passed by the Trial Court directing the defendants to hand over the possession of the suit property to plaintiff and dismissed the suit.

9. The plaintiff has challenged the judgment and order of the Appellate Court in the present second appeal. It is the contention of the plaintiff that the possession of the plaintiff over the suit property was duly established on the basis of revenue entry in the form of Namuma No. 8 of the Village Panchayat, so also tax receipts paid by the plaintiff in respect of the suit property. It is also contention of the plaintiff that there was no documentary evidence to show that the defendants are in possession of the suit property and thus, the substantial question of law arises as regards interpretation of documents and of possession and the finding of the Appellate Court are perverse in this regard.

10. The Appellate Court has considered Namuna No. 8 and tax receipts of the year 2008-09. The plaintiff has not filed documents to show prior possession before 2008-09 from the old record. Further, the defendant has examined DW 3 Vishwambhar Kale, the owner of Gat No. 43, who deposed that without the sale deed he sold the suit property to the father of defendant Nos. 1 and 2. The Gramsevak in her evidence has also deposed that in the year 2005 the defendants were in possession of the suit property. Thus, the evidence on record indicates that the defendants were in possession of the suit property much prior to the alleged cause of action in the year 2009 and that they have not encroached as contended by the plaintiff and therefore, the findings rendered by the Appellate Court cannot be said to be perverse. In view of the discussion made above, I hold that no substantial question of law arises for consideration in this second appeal. In the result, the second appeal stands dismissed.

[ARUN R. PEDNEKER J.]

SSC/