

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 413 OF 2024
WITH
INTERIM APPLICATION NO. 10182 OF 2024

Dattatray Namdev Khomane & Ors.

.... Appellants

: Versus :

Chudaman Sukhdev Khomane & Ors.

.... Respondents

Mr. Milind Deshmukh *with Mr. Shailesh Chavan, for the Appellants.*

Mr. Abhijit P. Kulkarni *with Mr. Abhishek Roy and Mr. Shreyas Zarkar, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATED : 3 SEPTEMBER 2026.

P.C :

1) By this Appeal, the Appellants/Defendants have assailed the judgment and decree dated 26 March 2024 passed by the District Judge-1, Pune, Baramati allowing Regular Civil Appeal No.7 of 2022 filed by Respondents/Plaintiffs and setting aside the judgment and order of the Trial Court dated 14 December 2021 passed in Regular Civil Suit No. 135/2016. The suit was filed by the Plaintiffs for recovery of possession of part of land bearing Gat No.119 from the Defendants. The lower Appellate Court has decreed the suit directing the Appellants/Defendants

to deliver vacant possession of the suit property to the Plaintiffs, by reversing the dismissal of the Suit by the Trial Court.

2) I have heard Mr. Deshmukh, the learned counsel appearing for the Appellants and Mr.Kulkarni, the learned counsel appearing for the Respondents.

3) Plaintiffs' filed Regular Civil Suit No. 135/2016 asserting that they are the owners of land bearing Gat no.119, Village-Korhale, Taluka-Baramati, District-Pune. They complained that out of land bearing Gat No.119 admeasuring 1 hectare 82 Ares, portion admeasuring 7 Ares was illegally encroached upon by the Defendants. Plaintiffs got Gat no.119 measured and got the boundaries fixed. However, since the Defendants allegedly refused to vacate land admeasuring 7 Ares, Plaintiffs instituted Suit for recovery of possession of land admeasuring 7 Ares from the Defendants.

4) Plaintiffs' suit was plain and simple. They claimed ownership in respect of whole of the land bearing Gat No.119. On the other hand, Defendants took a defence that they are the actual owners of some portion of land bearing Gat No.119. In support, Defendants' placed reliance on the documents forming part of consolidation scheme of the year 1951. Defendants particularly relied upon statement made by Namdeo Shreerang Khomane on 1 February 1959 about land forming part of house of Namdeo being included in Gat No.119 allotted to the ancestors of the Plaintiffs. It was thus the defence of the Defendants' that while drawal of the consolidation scheme and preparation of Gats, parties had agreed for an arrangement where ancestors of the Plaintiffs agreed to retain Namdeo's house in Gat No.119 and a revenue entry to that effect

could be effected. Since Defendants took this defence, the burden to prove this defence was solely on the shoulders of the Defendants.

5) The Trial Court had however unfortunately put the burden relating to consolidation scheme on the Plaintiffs' by holding in its judgment as under :

22.....but the plaintiffs have not pleaded in their plaint or in their evidence that consolidation officer while preparing consolidation scheme of gat No.119, reserved the right of defendant's ancestor and later on defendants for their locality. It clears that they have not opened all the facts before the court.

6) It is incomprehensible as to why Plaintiff would ever plead in the plaint or lead evidence that the Consolidation Officer, while preparing the consolidation scheme for Gat No.119, had reserved right of the Defendants' ancestors or later on of the Defendants for their house. This was the defence of the Defendants and they were required to plead and prove the same. Thus, the entire enquiry embarked upon by the Trial Court proceeded in a wrong direction.

7) More importantly, the Trial Court skirted the issue of ownership of land in respect of Gat No.119 by holding that it had no jurisdiction to entertain the matters settled by consolidation scheme. Here the Trial Court has contradicted itself. In para-19 of the judgment, it held that it had no jurisdiction to reopen the consolidation scheme, whereas in para-22 of the judgment it expected the Plaintiff to plead and prove matters relating to consolidation scheme. Be that as it may. It was never the case of the Plaintiffs that any matter relating to consolidation scheme needs to be reopened. The consolidation scheme made Plaintiffs' ancestors the owner in respect of entire Gat No.119. It was Defendants'

case that under the consolidation scheme, some portion of land forming part of Gat No.119 was reserved for their ancestors. They were required to prove this defence.

8) The sheet anchor of Mr.Deshmukh's submission in support of his contention about reservation of some portion of land in Gat No.119 is statement of Namdeo dated 1 February 1959. The statement reads thus :

स .नं .४७ मधील नामदेव व श्रीरंग भानुदास खोमणे यांची वस्ती गोविंद शंकर खोमणे यांच्या झालेल्या गटात येत असून या गटात वस्तीचे इतर हक्कात नामदेवची नोंद करणे

पंच

गोपाळ तात्याबा खोमणे

.....

स .वि गोविंद शंकर खोमणे

नामदेव श्रीरंग खोमणे

9) After recording the statement of Namdeo Khomane, according to Mr.Deshmukh following order was made by the consolidation officer :

जबाब लिहून देणार खाली सही करणार खातेदार लोक को-हाळे (खु) ता. बारामती कारणे विचारले वरून जबाब लिहून देतो की, मौजे गांवी तुकडे जोड योजनेचे काम चालू आहे. त्याकामी आम्ही आपसात कबूलीचे विचार करून पुढील जट पाडून घेतले. शदरचे गट करते समयी जमिनीचा सरस निरसपणा उत्पनाची वाव जाणे येण्याचे मार्ग, इरिगेशनचे पाणी वावत व कमी ज्यास्त क्षेत्रावावत मोबदला रक्कम न देता व गटांतील सोईस्कर अशी वहिवाट वगैरे सर्व गोष्टीचा विचार करून गट केले आहे. त्या वावत आम्हा पैकी कोणी तकार केल्यास ती विचारात घेवू नये म्हणून हा पंचा समक्ष जबाब देवून सही केली.

10) The above order does not indicate in any manner that any portion of land in Gat.119 was actually reserved for Namdeo Khomane.

11) To make the case of the Appellants/Defendants worse, the map prepared at the time of consolidation scheme would indicate that

Govind Shankar Khomane had given up his land admeasuring 1 Acre 2 Gunthas to Namdeo in exchange of Namdeo giving the land of 1 Acre to Govind. Thus, while consolidating the lands and preparing the Gats, Govind gave land admeasuring 1 Acre 2 Gunthas to Namdeo whereas Namdeo gave only land admeasuring 1 Acre to Govind. In this manner, Govind actually suffered loss of land admeasuring 2 Gunthas. Be that as it may. It is difficult to accept the contention of the Appellants/Defendants that the consolidation scheme reserved any portion of land for Namdeo in Gat No.118.

12) The conduct of the Appellants/Defendants post consolidation scheme to the year 1959 is also telling. Till filing of the Suit in the year 2016, no efforts were made by Namdeo or his successors to get their names mutated in any portion of land forming part of Gat No.119. For over 56 long years till filing of the suit, several mutations were effected in respect of Gat No.119, which were not objected to by Namdeo and by his successors. Therefore even if the statement of Namdeo dated 1 February 1959 is to be believed as correct, the contemporaneous conduct of the parties clearly indicates that there was no intention to ever reserve any portion of land of Gat No.119 for Namdeo.

13) During the course of evidence, Defendant's witness gave admissions as under :

ठरल्याप्रमाणे वादीच्या गट क्र.११९ ची व माझ्या गट क्र.१२० ची मोजणी झाली होती. आता मला गट क्र. १२० च्या मोजणीचा नकाशा दाखविला असता तो माझ्या जमिनीच्या मोजणीचा नकाशा आहे. या मोजणीच्या नकाशा विरुद्ध मी कोठेही तक्रार केलेली नाही. आजतागायत हा नकाशा मोजणी प्रमाणेच आहे. गट क्र.११९ च्या मोजणोकामी मी हजर होतो. मी गट क्र.११९ चा मोजणी नकाशा पाहिला आहे. या मोजणीच्या नकाशा विरुद्ध मी कोठेही तक्रार केलेली नाही. या

दाव्याआधी वादीने माझ्या विरुद्ध मनाईचा एक दावा दाखल केला होता. हा दावा चालू असताना मी त्या दाव्यातील दावा मिळकतीवर एक पत्र्याचे शेड उभे केले होते

14) Thus, specific admissions were given that no objections were ever raised for fixation of boundaries of Gat Nos.119 and 120. No objections were raised despite perusal of measurement map of Gat No.119. More importantly, Defendant's witness admitted that the tin shed was erected in the suit property (*admeasuring 7 Ares*) during pendency of the Suit.

15) Considering the above position, in my view, the Appellate Court has rightly declared Plaintiffs' to be the owners in respect of the entire land bearing Gat No.119. Once ownership of Plaintiffs' qua Gat No.119 is established, direction for removal of Defendants from Gat No.119 would not suffer from any infirmity. Plaintiffs' have clearly proved right to recover encroached portion of land by establishing their title. The Appellate Court has rightly reversed egregiously erroneous decree passed by the Trial Court. No interference is warranted in the decree passed by the Appellate Court. Even otherwise, the case involves mere factual enquiry and there is no substantial question of law. The Second Appeal is accordingly **dismissed**. The Interim Application also stands disposed of.

[SANDEEP V. MARNE, J.]

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