

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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SECOND APPEAL NO. 324 OF 2007
WITH CA/3682/2007 IN SA/324/2007

AHMED PYARMOHAMMAD ATAR AND ANR
VERSUS
DIGAMBAR KALIDAS SALUNKE AND ANR

Advocate for Appellants : Mr. Gawali Amol K.
Advocate for Respondent No.1: Mrs. Dube Anjali (Bajpai).

CORAM: T. V. NALAWADE, J.
DATED: 22nd SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Appeal No.362 of 2004 which was pending in the Court of Adhoc District Judge, Ahmednagar. The learned Adhoc District Judge has set aside the judgment and decree of the trial Court delivered in Regular Civil Suit No.20 of 1998 which was pending in the Court of Civil Judge, Senior Division, Shrigonda. The suit was filed by present Respondent for relief of possession of some open space on which there

is a construction of defendant Nos.1 and 2. The suit was dismissed by the trial Court but the relief is given by the first Appellate Court. Both the sides are heard. This Court has gone through the record.

2. It is the case of the plaintiff that he is owner of house property bearing CTS No.1842 situated at Shrigonda, district Ahmednagar and it is his ancestral property. It is contended that the Defendant Nos.1 and 2 have made construction of a stall of the size of 10'x10' on this property when they have no concern or right in the suit property. It is contended that they occupied this space in May, 1998 and they refused to vacate it and so the suit was required to be filed.

3. Defendant Nos.1 and 2 filed written statement and contested the suit. They contended that the suit property is not correctly described. They contended that this property was never in possession of plaintiff. They contended that City Survey No.1842 was owned by Shrigonda Gram Panchayat and now it is owned by Municipal Council, Shrigonda. It is contended that there

was dispute regarding ownership between plaintiff and this local body. It is contended that the suit space was taken by defendants on rent basis from the local body and they are paying rent to the local body and so plaintiff is not entitled to get possession of the suit property from them.

4. The local body was made party to the suit but it did not file written statement.

5. Both the sides gave evidence. The trial Court dismissed the suit by holding that there was dispute between the plaintiff and the local body regarding ownership and as the point of ownership was not decided finally it was not possible to give the relief of possession to the plaintiff.

6. The first Appellate Court has considered the record like copy of registered sale deed which was executed in favour of grand father of plaintiff viz. Ganpat Salunke in the year 1947 and also the record of Assessment and property Extract showing that the property was entered

in the name of the plaintiff. When the appeal was decided, writ petition filed by plaintiff against decision of revenue authority was still pending in High Court.

7. The submissions made and copy of decision given by this Court in Writ Petition No.3496 of 2002 show that when the revenue authority was implementing settlement scheme for imposing liability in respect of the land revenue, nobody had come forward to claim ownership over the open space. In view of this circumstance, the Government was shown as the owner of the open space. Then, plaintiff challenged this entry by filed proceeding before the Appellate Authority and showed that no notice was given to plaintiff and he was having the record like sale deed. The Sub Divisional Officer decided the matter in his favour but the decision was set aside by the Government and then plaintiff had filed the writ petition. This Court considered the record like copy of sale deed and the record of city survey and gave decision in favour of the plaintiff. Thus, it can be said that the revenue authority has now decided that the property was in occupation of plaintiff and the incident of

sale deed is considered.

8. The learned counsel for the Appellant submitted that the first Appellate Court committed error in considering the certified copy of sale deed in evidence when the procedure prescribed for giving of secondary evidence was not followed by the plaintiff. He placed reliance on observations made by this Court in the case reported as **2006 (2) ALL MR 659 [Nagpur Bench] (Rambhau Sadashivappa Jatkar V/s Tryambak Shenfal Satbharkre]**. This Court has discussed the provisions of Sections 63 and 65 of the Evidence Act and has observed that the procedure of leading secondary evidence needs to be followed before making the document of secondary evidence admissible. On the other hand, the learned counsel for Respondent placed reliance on the case reported as **AIR 2004 SCW 4419 [Dayamathi Bai V/s K.M.Shaffi]**. In this this the Apex Court has considered the circumstance that objection was not taken when the document was given exhibit. The provision of Order XIII Rule 3 of Civil Procedure Code is considered. The provision of Section 90 of Evidence

Act is also considered and it is observed that certified copy of document like sale deed which was executed 30 years prior to the date of production of certified copy can be read in evidence. On the other hand, learned counsel for Appellant placed reliance on some cases reported as ***AIR 1954 SC 606 [Sital Das V/s Sant Ram and others], AIR 1996 SC 1253 [Sri Lakhi Baruah and others V/s Sri Padma Kanta Kalita and others] and 2014 AIR SCW 580 [Union of India V/s Vasavi Coop. Housing Society Ltd. and others]***. The learned counsel submitted that onus was on the plaintiff to prove the title and as the copy of sale deed could not have been used as evidence, the first Appellate Court has committed error in holding that the plaintiff is the owner of the suit property. He submitted that on this point substantial question of law can be formulated.

9. The rival pleadings show that the defendant Nos.1 and 2 have contended that in respect of the property, which is in their possession, some dispute was going on between the local body and the plaintiff regarding the ownership. Only because nobody had come forward to

claim ownership in respect of this property the name of Government was entered in the revenue record at the relevant time. Now that entry is deleted and on the basis of the claim of the plaintiff the name of plaintiff is entered in the revenue record. The defendants have no locus-standi to have grievance in respect of such record and the decision given in favour of the plaintiff.

10. The defendants were claiming that the local body had given the disputed space to them on rent basis. A witness of local body has denied that there was such agreement between the local body and defendant Nos.1 and 2. Only because for some period defendant Nos.1 and 2 paid tax to the local body it cannot be inferred that there was such agreement between the defendants and the local body. Thus, apparently defendants are trespassers on the disputed property.

11. The reasoning given by the trial Court shows that the certified copy of sale deed was produced in the trial Court and it was considered by the trial Court also. At that time the document was not seriously disputed by

defendant Nos.1 and 2 and the trial Court had refused the relief to plaintiff only due to the reason that some dispute between the Government, local body and plaintiff was going on in respect of this property. Thus, the trial Court had also not decided anything about the title of plaintiff and the suit was dismissed by holding that it was pre-mature. In view of aforesaid circumstances, the first Appellate Court considered the certified copy of the sale deed. It can be said that the consideration of this document by the Courts was not seriously opposed by the defendants. In view of this circumstance, it is not open now to the defendants, present appellants to say that the necessary procedure for admission of secondary evidence was not followed.

12. The defendant Nos.1 and 2 have no right as such to continue the possession and as against that there is a record of ownership with the plaintiff. In view of this circumstance, it is not possible to formulate substantial question of law. The question of law, which can be considered by this Court, in second appeal, needs to be such that it will affect the decision of the matter. In any

case on the basis of point raised by appellants, the decision is not likely to change. This Court holds that no substantial question of law as such is involved.

13. In the result, appeal stands dismissed.

14. In view of final disposal of the second appeal nothing further survives in Civil Application No. 3682 of 2007 and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.22/09/2015
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