

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, orders or Registrar's	Court's or Judge's orders.
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SECOND APPEAL NO. 388 OF 2012
WITH CA/6889/2012 IN SA/388/2012

MADHAV BHAGUJI BHAGWAT (DIED) LRS YAMUNABAI
MADHAV BHAGWAT AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Advocate for Appellants : Mr. Bhalerao R. D.

CORAM: T. V. NALAWADE, J.
DATED: 29th SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.45 of 1993 which was pending in the Court of Civil Judge, Senior Division, Sangamner and also to challenge the judgment and order of Regular Civil Appeal No.6 of 2003 which was pending in the Court of District Judge-2, Sangamner. The suit filed for relief of injunction and declaration by the present Appellant is dismissed. Heard learned counsel for the Appellant.

2. It is the case of plaintiff that he has been in possession of portion of 1 Hectare 64 Ares land from Survey No.4 of village Velhale, Tahsil Sangamner. This land belongs to the State Government. It is the case of plaintiff that his possession is from the year 1966, though he is an encroacher. Total area of Survey No.4 is 18 Acres 6 Gunthas. It is the case of plaintiff that different portions of this land were already allotted to different persons, including defendant Nos.5 and 6 by the Government in the past and then Survey No.4 was sub-divided.

3. It is the case of plaintiff that, in the record of rights, the land is shown as reserved for grazing cattle but it was never used for grazing cattle. It is contended that though the plaintiff is in possession his name is not shown intentionally by the revenue authorities in crop cultivation column.

4. It is the case of plaintiff that there is one Government Resolution of 1992 and in the past also there were Government Resolutions due to which the persons belonging to Scheduled Castes and Scheduled Tribes can get their possession regularised in respect of

such lands. It is contended by plaintiff that he had given application for regularisation of his possession in the year 1992 and then some inquiry was also made. It is contended that the defendants, the authorities of the Government, are avoiding to regularise the things and so plaintiff has filed the suit. It is contended that defendant Nos.3 and 4, the officers of the Government, are trying to dispossess him and so relief of injunction needs to be given to him.

5. The Officers of the Government, like Tahsildar, filed written statement and contested the matter. It is the case of the Government that the plaintiff is encroacher and he has no right to get any relief. It is contended that in the past, out of Survey No.4, some portion was allotted to brother of plaintiff and that portion is in possession of his brother. It is contended that no other portion is in possession of plaintiff or his brother but the plaintiff is trying to grab the remaining portion of this land also. It was contended that the suit land is in possession of one Karbhari but he is not made party to the suit. This Karbhari was then made party to the suit and he contended that he has been in possession of the

suit property since 1964-65 and his name is also entered in the crop cultivation column. He contended that he has also moved the Government for regularising his possession. It is contended that to the family of plaintiff like his brother already portion of 5 Acres is allotted and plaintiff is not entitled to get the suit portion.

6. Plaintiff has given evidence. The Courts below have considered the circumstance that plaintiff is claiming to be an encroacher on the suit property but there is no record even to prove his possession. The Courts below have considered the circumstance that plaintiff's father was in possession of Survey No.32/4 and now that land is in possession of plaintiff and his brother and he cannot be called as landless person. The Courts below have considered the circumstance that there is a record to show that Survey No.4/2/1 is allotted to Forest Department and it belongs to Forest Department. The Courts below have considered the provision of Forest Conservation Act and it is held that this land could not have been allotted to the plaintiff. The Courts below have considered the circumstance that in revenue record it is mentioned that the land is reserved for grazing

cattle. As there is no record whatsoever to make the case of possession, no relief is given. The findings of the Courts below are concurrent and they are findings on facts. This Court holds that it is not possible to formulate any substantial question of law for admission of the second appeal.

7. In the result, appeal is dismissed.

8. In view of final disposal of the second appeal itself nothing further survives in the civil application for stay and the same stands disposed of accordingly

[T. V. NALAWADE, J.]

Dt.29/09/2015
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