

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 516 OF 2012

Manik Maruti Bodakhe & Anr. **APPELLANTS**

V E R S U S

Jayabai Mohan Bodakhe & Ors. **RESPONDENTS**

.....

Mr. S.T.Shelke, Advocate for Appellants.

.....

CORAM : T.V.NALAWADE, J.

DATE : 13th OCTOBER, 2015

ORDER :-

1. Present Second Appeal is filed against the Judgment and decree dated 20/10/2008 in R.C.S. No. 65/2002 which was pending in the Court of Civil Judge [Jr.Division], Shevgaon and also the Judgment and Order dated 06/03/2012 in R.C.A. No. 5/2009 which was pending in the Court of District Judge – 8 at Ahmednagar. The Suit filed against the present appellant for relief of injunction is decided against him.

2. Heard learned counsel for the appellant.

3. The Suit was filed in respect of ½ portion of G.No. 319 situated at village Kharadgaon, Tq. Shevgaon, Dist. Ahmednagar. The area of ½ portion is 94 R. It is

contended that the father of defendant Nos. 1 to 3 viz. Maruti was real brother of plaintiff Mohan and G.No. 319 was their ancestral property. It is contended that partition took place between two brothers and $\frac{1}{2}$ portion situated on northern side came to the share of plaintiff and the remaining $\frac{1}{2}$ portion situated on southern side came to the share of defendant. It is the case of the plaintiff that his issues are young and in order to grab the property of plaintiff, defendants have started causing damage to the common bandh situated between aforesaid two portions. The date of cause of action was given in the Suit and relief of injunction was claimed.

4. The defendants filed joint Written Statement and contested the matter. They contended that plaintiff was younger between two brothers and so the portion of good quality was given to his share and the portion which was not of that good quality but having more area was given to the share of Maruti in the partition. However, the defendants have admitted that these two portions are divided by common bandh. They have contended that the portion which was given to Maruti is partitioned amongst the defendants, who are successors of Maruti. They have contended that they are not causing damage to the common bandh, on the contrary, plaintiff is trying to make encroachment on the portion belonging to the defendants.

5. Issues were framed by the trial court and both the sides adduced evidence. The fact of partition is

not disputed by the parties and they are not disputing the entries made in the revenue record. Entry in respect of separate possession of 94 R. portion is taken. Eight Ana portion was given to the share of Mohan and he was shown in possession of this portion. The revenue record further shows that eight Ana portion which had come to the share of Maruti was divided amongst 3 sons of Maruti, the defendants.

6. When there is record of aforesaid nature and when the defendants are admitting that partition had taken place between Mohan and Maruti, they are trying to say that more area is given to Maruti in the partition. There is no support to this contention in the revenue record. On the other hand, both the sides are admitting that there is common bandh between two portions and plaintiff wants protection of his possession over the portion situated on one side of the bandh. The Suit was not for possession and it was only for injunction. The courts below have considered the aforesaid contentions and the revenue record and as the defendants are contending that more area has come to their share, the courts have held that there was cause of action for the Suit and relief of injunction is given. The relief is given on the basis of the evidence and there is concurrent finding, which is on fact. There is no material at all for formulation of substantial questions of law and so there is no need to call the other side in the Appeal.

7. In the result, present Second Appeal stands dismissed.

[T.V.NALAWADE, J.]

KNP/S.A. 516.2012