

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

Second Appeal No.609 of 2012

Baburao s/o Sambhaji Waghmode. .. **Appellant.**

Versus

Bandu s/o Tukaram Sagle
And Others.

.. **Respondents.**

Shri. A.A. Shelke, Advocate, holding for Shri. Prashant D.
Suryawanshi, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 20th OCTOBER 2015

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.196 of 2003 and also against the judgment and order of Regular Civil Appeal No.11 of 2009. Heard learned counsel for the appellant.

2) The suit was filed by the appellant for declaration of ownership and for removal of so called encroachment made by the defendants over the suit property. The suit was filed in respect of 28 R portion of land Survey No.68/B situated at village Bag Pimpalgaon.

Before the consolidation the land was bearing Survey No.68/B and at present it is Gat No.164. It is contended that the disputed portion was owned by one Gajaba Mugatrao. Gajaba died in the year 1977-78 leaving behind 5 daughters like Thakubai, Sujanbai, Ankitabai, Santabai and Tulsabai. It is contended that on the date of the suit Ankitabai and Thakubai were dead.

3) It is the case of the plaintiff that after the death of Gajaba the property was entered in the name of Sujanbai in the revenue record. It is contended that Sujanbai transferred portion of 29 R and Thakubai transferred 3 gunthas land to the plaintiff in 1999 and so his name was entered in the ownership and possession column.

4) It is contended that defendant Nos.1 to 10 have no concern whatsoever over the portion of the suit property. It is contended that the defendants have made encroachment over different portions of the suit property. Particulars of encroachment made by each of them are given and it is contended that the defendants have made

construction. It is contended that the plaintiff requested the defendants to remove the encroachment but they refused to do so, therefore, the suit is required to be filed. It is contended by the plaintiff that he is owner of 28 R portion of Gat No.164 and the defendants have made encroachment over this portion.

5) The defendants filed written statement and contested the matter. Defendant No.2 contended that he had purchased 3 gunthas portion from Santabai D/o Gajaba for consideration of Rs.45,000/- under sale deed dated 8-5-2011. It is contended that since then the defendant No.2 is in possession of this property and there is no encroachment made by him. He has contended that on the basis of sale deed mutation is made in the revenue record.

6) Defendants Nos.1 to 4 contended that defendant No.10 is son of Tulsabai, daughter of Gajaba and so he is successor of Gajaba. Defendant No.1 contended that he has purchased one and half gunthas portion under sale deed dated 19-4-1967 from Gajaba and

he has purchased some portion from defendant No.10. He contended that he purchased one half gunta from defendant No.10, thus he contended that he is in possession of 2 R portion as owner.

7) Defendant No.2 contended that he has purchased 3 gunthas portion and he made construction on this portion. He has contended that entry in respect of this house is made in village panchayat record and he has been paying tax to the village panchayat.

8) Defendant Nos. 7 to 9 contended that they have purchased the land from one Shaikh Aminoddin by registered sale deed dated 20-7-1974 and they are in possession since then and so the suit is not within limitation.

9) Defendant No.3 contended that in the year 1980 Tahsildar Georai had allotted to him the portion of 15 x 10 square feet in Gat No.169 and he is in possession of that portion.

10) On the basis of the aforesaid pleadings issues were framed by the trial Court. Both the sides gave evidence. The defendants produced copies of sale deeds and also mutations effected on the basis of the sale deeds.

11) The plaintiff wanted to prove that he has become owner under sale deed executed by his wife Sujanbai in the year 1999. In the revenue record the plaintiff is shown to be owner of 32 portion from Gat No.164. Attempt is made by the plaintiff to show that 14 R portion came to the share of his wife. There is no record with him to show that deceased sister of his wife like Antikabai had given her share to the wife of the plaintiff. On the other hand, plaintiff has produced sale deed to show that 29 R portion was sold by his wife to him. The petitioner has admitted that he has sold 4 R land to persons like Ashok Dnyandeo and Namdeo Dnyanoba. There is no convincing record to show that the plaintiff is owner of 32 R portion.

12) If Antikabai was dead, her share would have gone to the remaining sisters equally but there is no such

record. On the other hand, on the basis of aforesaid record and the circumstances the Courts below have held that the plaintiff could have claimed ownership only in respect of 13 R portion.

13) For proving the encroachment it was necessary for the plaintiff to take measurement and show his exact portion and then get possession of the encroached portion. There is nothing to show that there was partition amongst 5 daughters of Gajaba. Admittedly defendants are in possession of different portions and they have produced record to show their title. In view of vagueness of the pleadings of the plaintiff and the nature of evidence, it was not possible for the Courts below to give relief of declaration and possession. There is nothing on the basis of which substantial questions of laws can be formulated. In the result, the appeal stands dismissed. Civil Application stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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