

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. 513 OF 2015
WITH CA/12095/2015 IN SA/513/2015

KISHORILAL GOBINDRAM GUNWANI
VERSUS
HIRALAL TULSHIRAM MADHEKAR AND OTHERS

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Advocate for Appellant : Mr. Sonpethakar Pradeep N.
Advocate for Respondent Nos.1 to 3 Caveators: Mr. S. R. Deshpande.

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

PER COURT:

1. The appeal is filed against the order made on Exhibit-58 in Special Darkhast No.125 of 2000 which is pending in the Court of Civil Judge, Senior Division, Aurangabad and also to challenge the judgment and order of Regular Civil Appeal No.56 of 2015 which was pending in the Court of Adhoc District Judge-3, Aurangabad. Both the sides are heard.

2. The facts leading to the institution of present

proceeding show that Special Civil Suit No.5 of 1987 was filed for relief of specific performance of contract in respect of property bearing CTS No. 794 (Plot No.241) situated at Aurangabad, by Respondent No.1. Decree of specific performance was given in his favour. The agreement was made by defendant No.1 and defendant No.2 of the suit was a real brother of present Appellant. It was the case of defendant No.2 Nandlal that there was an agreement of sale between him and defendant No.1, the original owner and under the agreement of 1977 he had come in possession of the suit property. This document was considered by the Court but decree of possession was given against Defendant No.2 Nandlal.

3. During pendency of execution proceeding Nandlal died and his legal representatives filed objection to the execution by making contentions which were similar to the contentions of present applicant and the matter was taken up to Supreme Court. They could not succeed and then present appellant, brother of Nandlal filed objection application under Order 21 Rule 97 of Civil Procedure Code.

4. Present appellant was found in possession when the officer of Court went to the suit property for executing the decree of possession. The appellant gave undertaking that he would vacate the premises and he requested for some time and due to that the possession was not taken over by Court Officer at that time.

5. It is the case of Appellant that there was family arrangement between him and Nandlal and in the family arrangement the suit property was given in possession of the appellant. It is contended that he has been in possession since the year 1984 and his possession is there for more than 25 years. It is contended by him that he had made construction over this plot and so possession cannot be taken from him. There was the contention of Nandlal also that he had made this construction. Nandlal had never contended that he had given the possession to the present Appellant.

6. The contentions made by the present Appellant show that he is claiming the rights through Nandlal. The possession decree is given against Nandlal and it has become final. In view of these circumstances, it cannot

be said that present Appellant is in possession in his own rights. His case of adverse possession also cannot be considered in view of the aforesaid contentions made in the objection petition. Though he was found in possession when the Court Officer had gone to execute the possession decree, he is claiming his rights through Nandlal and so the decree given against Nandlal is binding on him. In view of these circumstances the Courts below have held that he has no separate right or interest in the suit property. The findings of the Courts below are concurrent.

7. The learned counsel for the Appellant submitted that the aforesaid points involved in the matter were not framed and considered by the Courts below and so on this point substantial question of law can be formulated and appeal can be admitted. Following point was framed and considered by the Courts below:

“Whether the Objector has any independent title, right or interest in suit property?”

8. This point involves all the aforesaid contentions made by the plaintiff and so nothing more was required to be considered by the Courts below.

9. The learned counsel for the Appellant placed reliance on one case reported as **AIR 2013 SC 2239 (United Engineers and Contractors V/s Secretary to Govt., A.P. and others)**. In this case, the Apex court has laid down the manner in which the appeals filed under Order XLI of Civil Procedure Code need to be decided by the Appellate Court. In that matter, the Apex Court found that the relevant facts were not mentioned in the decision of the Appellate Court, issues framed were not touched and abruptly the Appellate Court had reached the conclusion. The facts of the present case are altogether different and aforesaid are the relevant facts. No more point was involved in the matter. This Court has no hesitation to observe that there is nothing in the matter on the basis of which substantial question of law can be formulated. It is nothing but a tactics played by the judgment debtor and the persons who could have claimed through the judgment debtor, for

protracting the execution of the decree .

10. In the result, appeal stands dismissed.

11. Civil Application for stay does not survive and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.29/09/2015
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