

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.607 OF 2011

Eknath Ganpat Adhav & Others

APPELLANTS

VERSUS

Namdeo Dharu Salve & others

RESPONDENTS

.....

Mrs. Sangmitra Wadmare, Advocate for the appellants

Mr. Atul B. Gatne, Advocate for respondent No.1.

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 24th NOVEMBER, 2015

ORDER :

1. Heard learned advocates for the appellants and respondent No.1 quite at some length.

2. Submissions of learned advocate for the appellants – defendants revolve around the proposition that a true owner cannot be enjoined under the discretionary powers. According to learned advocate for the appellants, the suit land is a '*mahar hadola watan*' land and that the appellants are owners and in possession of the same. The respondents - plaintiffs have failed to produce original sale deed on record and as such, claim with regard to ownership cannot be said to have been established and the plaintiffs would not be entitled to seek injunction. It is

further being submitted that in the revenue proceedings, original plaintiffs have failed. In the circumstances, no injunction can be issued against the appellants.

3. Learned advocate for the appellants places heavy reliance on 1995 (2) Bom.C.R. 374 "*Premji Ratansey Shah and Others V. Union of India and Others*". Taking into account facts involved in said case that the Railways had become absolute owner of the suit property under land acquisition proceedings long before sale deed was executed in favour of the appellants by the claimed owners of the property, certain observations have been made by the Supreme Court about that even if a person is in possession and if the same is wholly unlawful, and the possession is that of a trespasser, injunction cannot be issued in favour of a trespasser or a person who is in unlawful possession, as against the owner. It is thus observed that it is settled that injunction would not be issued against a true owner.

4. Learned advocate for the appellants further refers to a couple of decisions, i.e. one reported in AIR 1998 Bombay 89 "*Mulji Umershi Shah V. Paradisia Builders Pvt. Ltd.*", and the other 2000 (3) Mh.L.J. 347 "*Ganesh D. Daivajna V. Prakash S. Salkar*". Both the cases were cited before the appellate court and have been considered.

Perusal of said decisions would show that the matters were concerned with interim injunction and would hardly have any application in the present matter.

5. Mr. Gatne, learned advocate for respondent No.1, on the other hand submits that there are concurrent findings of facts about the possession of the plaintiffs - respondents, over the suit property from the date of execution of sale deed in their favour by one Laxman Pawal, whose name, at the relevant time, had appeared as owner in the revenue record. He also refers to the observations of the trial court as well as of the appellate court referring to that said Laxman Pawal had purchased suit land from one Mr. Shinde, who in turn had purchased it from present appellants. He further submits that in the process, claim of the defendants of being owners stands on a fragile ground.

6. He submits that although subsequently, revenue record has undergone some mutations, the revenue entries merely would not confer legal title. He further refers to consolidation proceedings wherein entries appear to be not favouring the defendants. He submits that revenue proceedings are not completely over as yet and as such, the ado being made about the same would hardly have any efficacy, as far as present

proceedings are concerned. He points out the discussion by the trial court about the revenue entries all along showing plaintiffs to be in possession, save one year, and that, such a stray entry has been rightly discarded by the courts by giving cogent reasons.

7. He, therefore, submits that there is no substance in the second appeal and it does not give rise to any substantial question of law and as such, the concurrent decrees passed by the courts below do not call for any interference and disturbance in the second appeal.

8. Having regard to the position that the revenue record continuously after 1975 without any interruption to the date of the suit had shown plaintiffs to be in possession, subsequent aberration occurring in the form of defendants' entry in the cultivation column in respect of only one year has been considered by the court and appreciated. It may be worthy to be taken into account that subsequently, however, revenue entries continue to show plaintiffs' names in the cultivation column. Although it is being contended that said entries have been cancelled, learned advocate for the respondents states that those cannot be said to have been final. It has to be taken into

account that plaintiffs relate their title to a sale deed from a person, who traces the same to a document, which is purportedly executed by the defendants.

9. On perusal of both the impugned judgments it does not appear that the defendants lay claim to the title on the basis of any origin except the revenue record, whereas the plaintiffs – respondents relate the same in their favour under a registered document.

10. Having regard to aforesaid position, it would not be a case that the plaintiffs can be whisked away by alleging that they are trespassers over the suit property. It is by now a settled law that persons in settled possession would be required to be dealt with in accordance with law and not otherwise. In view of the facts and circumstances of the case and the considerations which have weighed with the courts below, the second appeal does not appear to bear any substantial question of law. As such, the second appeal fails and stands dismissed.

11. Pending civil application stands disposed of.

[SUNIL P. DESHMUKH, J.]