

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.412 OF 2015

Pandit Akaram (Pawar) Kate .. Appellant

Vs.

Chander Krishna Patil and Ors. .. Respondents

Mr.Kalpesh U. Patil for the appellant

Mr.T.S.Ingale for the respondent no.1

Mr.Umesh H. Pawar for the respondent no.7

CORAM : K.K.TATED, J.
DATED : 21/10/2015

PC:

1 Heard the learned counsel for the parties.

2 This Second Appeal is preferred by plaintiff challenging the concurrent finding of fact recorded by both the courts below.

3 In the present proceeding, the plaintiff filed Regular Civil Suit No.474 of 1992 in the court of Civil Judge, Junior Division, Islampur for an order of injunction restraining respondents defendants from disturbing his possession in respect of suit land i.e. Gut No.2450 admeasuring 0.67 Ares of Mouje Peth, Walva, Dist.Sangli.

4 Plaintiff claimed possession in respect of the suit property on the basis of tenancy of his father Laxman. The plaintiff's case was that his father Laxman was a tenant in respect of the suit property for several years. After his death, he became a tenant and was in possession of the suit property. Hence, he filed Suit for an order of injunction restraining respondents defendants from disturbing the plaintiff's peaceful possession in respect of the suit property.

5 The Trial Court dismissed the suit by the Judgment and Decree dated 27.4.2010 holding that as per Exhibit 97 to 100 from Gut No.2450 the name of Laxman Babaji Mahar from who plaintiff claimed tenancy right was deleted as a permanent tenant. Thereafter, the said Laxman Babaji Mahar preferred Appeal No.12 of 2002. That appeal was also dismissed. Therefore, plaintiff have no right in suit property as tenant and possession thereof. The Trial Court held that the defendant no.1 purchased the suit property from Sanjay Pandurang Gaikwad by registered sale deed dated 15.7.1992 and thereafter the remaining portion of the suit property from Rangrao by sale deed dated 15.8.1992 and since then, defendant no.1 was in possession of the suit property. Hence, the Trial Court dismissed the plaintiff's suit.

6 Being aggrieved by the decree passed by Trial Court, the plaintiff preferred Regular Civil Appeal No.53 of 2010. Even the appellate court also held that the plaintiff failed to prove his lawful possession of the suit land. The Appellate court dismissed the Appeal by decree dated 11.12.2013. Hence, plaintiff preferred the present Second Appeal.

7 The learned counsel for the appellant plaintiff submits that

though the plaintiff's name was removed from the revenue record as a tenant, same was challenged before the revenue authority. He submits that the appeal preferred by the plaintiff challenging the removal of his name as a tenant from the revenue record was dismissed by the Sub-Divisional Officer, Walva Division, Islampur. He submits that the said order was challenged by him before the Revenue Tribunal at Pune. He submits that the Revision is pending for hearing and final disposal on its own merits. He submits that these facts are not considered properly by both the courts below. Hence, the the Judgment and Decree passed by both the courts are required to be set aside directing respondents defendants not to disturb the plaintiff's possession over the suit property.

8 On the other hand, the learned counsel for the respondents vehemently opposed the present Second Appeal. He submits that predecessor of the plaintiff Laxman sold the suit property. Suit property was purchased by the defendant by sale deed dated 15.7.1992 and 14.8.1992. Exh.134 and 135 and since then, they are in possession of the suit property. He submits that the name of the predecessor of the plaintiff Laxman was deleted from the revenue record as a tenant. He submits that even the Sub-Divisional Officer dismissed the plaintiff's appeal challenging the removal of their name from the Revenue record as a tenant. He submits that since the date of purchase of the suit property, defendants are in possession of the same. Considering these facts, both the courts below held that the defendants are in possession of the suit property. Hence, there is no substance in the present Second Appeal and same be dismissed with costs.

9 I have heard both the sides at length. In the present proceeding, the appellant plaintiff is challenging the concurrent finding of fact recorded by both the courts below. Both the courts declined to grant injunction in favour of plaintiff. It is to be noted that even the Sub-Divisional Officer dismissed the Appeal preferred by plaintiff for removal of his name as a tenant from the revenue record. Though revision is pending before the higher authority, plaintiff has not placed on record any document to show that the order passed by the Sub-Divisional Officer was stayed.

10 The defendants are in possession of the suit property as a owner on the basis of sale deed dated 15.7.1992 and 14.8.1992.

11 Considering these facts that the defendant is in possession of the suit property from the date of purchase and as there is a concurrent finding of fact recorded by both the courts below, I do not find any reason to entertain the present Second Appeal as there is no question of law involved.

12 Hence, Second Appeal stands dismissed.

(K.K.TATED, J.)