

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.103 OF 2011**

Narayan Dadu @ Waman Kamble Appellant
since deceased, thru' his legal heirs
and others.

Vs.

Sitaram Akaram Kamble, Respondents
since deceased thru' his legal heirs
& Ors.

Mr. S.G. Deshmukh i/by Mr. Vikas M. Mali, Advocate for the Appellant.
Mr. Rajesh Datar, Advocate for Respondents No. 2 to 7.

Coram : Smt. R.P. SondurBaldota, J.

Date : 2nd March, 2015.

P.C.

1 The appellants are the heirs and legal representatives of the original defendant, Narayan. They challenge the judgment and order dtd. 20th October, 2010 passed by the District Court, by which Regular Civil Appeal No.863 of 1999 was allowed and the Regular Civil Suit No.506 of 1989 was decreed.

2 The facts of the case stated in short are as follows:

The original respondent, Sitaram (since deceased) filed the suit for perpetual injunction to restrain, Narayan from encroaching upon any portion of land beyond that to which he is entitled. The dispute in the present suit is in respect of lands at CTS Nos. 398 and 399, situate at village Chikurde, Taluka Walwa, District Sangli. They are adjoining to each other. A portion admeasuring 18 feet East-West and 35 feet North-South out of CTS No.399 is occupied by Narayan with his structure standing thereon. Sitaram claimed to be the owner and in occupation of entire land at CTS Nos. 398 and 399 except the portion admeasuring 18 feet x 35 feet in occupation of Narayan. He alleged that Narayan was attempting to encroach upon a portion of the two lands marked by letters “ह, ँ, झ, झ” on the sketch annexed to the plaint. When Sitaram objected to the attempts, the respectable persons from the village including Sarpanch and Up-Sarpanch intervened and a compromise as disclosed in the writing dtd. 11th December, 1988 was signed by Narayan. By that writing, he acknowledged the rights of Sitaram to the lands at gat Nos. 398 and 399 except for the portion admeasuring 18 feet x 35 feet on the North-East corner his occupation. But thereafter Narayan started digging over the another portion marked by letters “य, र, ल, व” and Sitaram was constrained to file suit for perpetual injunction against him.

3 Narayan resisted the suit denying all the allegations made by Sitaram. He claimed that entire CTS No.399 is owned and possessed by him as an ancestral property. He denied the execution of the writing dtd. 11th December, 1988. When the suit went for trial, Sitaram examined himself and two persons, who were present at the time Narayan signed the writing. Narayan led no oral evidence. He had, however, produced certain revenue documents in respect of the land at CTS No.399 and had claimed title on the basis thereof.

4 The trial court held that Sitaram had failed to establish actual possession over the disputed property and the allegation of interference with that possession by Narayan. With these findings, the trial court dismissed the suit.

5 The appellate court for reversing the decree noted that the trial court had not taken into consideration the writing dtd. 11th December, 1988, which had been proved. In addition to the writing, there was evidence of Sitaram and witnesses Shankar Kamble, Jagannath Kamble. The two witnesses were independent witnesses, who had deposed about execution of the writing by Narayan and about the admission on the part of Narayan that he was in possession of only portions admeasuring 18' x 35' from Survey No.399, situate in it's north-east corner. As against this, there was no positive evidence from

Narayan to establish his defence. The evidence of the witnesses examined by Sitaram also established the attempt on the part of Narayan to encroach of the land of Sitaram.

6 Mr. Deshmukh, the learned advocate for Narayan submits that the relief granted by the appellate court is beyond the prayers in the suit and that the property in respect of which the relief is asked for has not been properly described in the plaint. As such, there could be no decree passed in favour of Sitaram. Perusal of the prayer in the suit and the averments in the plaint is sufficient to reject the argument. Sitaram has described the suit property not only by the dimensions and the location but also shown in the sketch annexed to the plaint. Further the description of the property is not disputed in the written statement. Then Mr. Deshmukh submits that Sitaram did not establish title to the two properties. The evidence on record including the admission by Narayan in the writing dtd. 11th December, 1988 is sufficient to establish right of Sitaram. Besides, as already observed above, Narayan did not even step into the witness box to depose. Therefore, the findings of the appellate court stand established by the material on record. There is no substantial question of law arising for consideration of the court. Hence, the Second Appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)