

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.903 of 2012

Vitthal Dadu Yadav,
since deceased, through his
LRs.: Balutai Vittal Yadav
and others

... Appellants

Versus

Tukaram Ramchandra Yadav
and others

... Respondents

Shri Jayant Gaikwad, Advocate for Appellants.
Shri Ranaware Dhananjay, Advocate for Respondent
Nos.1 to 3.

Coram : R.K. Deshpande, J.
Dated : 10th June, 2015

P.C.:

Regular Civil Suit No.104 of 1989 was decreed by the Trial Court on 24-2-2006 and the defendants were permanently restrained from obstructing the plaintiff's possession over the suit property. Alternatively, the defendants are directed to hand over the possession of two acres of land adjacent to Gat No.658 to the plaintiff within a period of three months from the date of the judgment. The Appellate Court has set aside this decision by its judgment and order dated 30-6-2012 delivered in Regular Civil Appeal No.50 of 2006. Hence, the original plaintiff is before this Court in this second appeal.

The dispute pertains to two acres of land out of

Survey No.204, which was re-numbered in the consolidation proceedings as Gat No.658, admeasuring 1 acre and 8 gunthas. The claim of the plaintiff was that the defendants have encroached upon two acres of land out of Gat No.658. The Trial Court relied upon *Gunakar Patrak* at Exhibit 162 in respect of Survey No.204 and Exhibit 163 in respect of Survey Nos.206 and 207. The Appellate Court has held that Gat Nos.673 and 658 are distinct fields and the same are divided by three different fields, which are located in between them.

The factual position is that the plaintiff is the owner of Survey No.204, which was converted into Gat No.658 in the consolidation proceedings, whereas the defendants are the owners of Survey No.207, which was converted into Gat Nos.672 in the consolidation proceedings. The claim of the plaintiff is that the defendants have encroached upon two acres of land, which is the part and parcel of Gat No.658.

After considering the evidence on record, the Appellate Court has held that Gat Nos.672 and 658 are totally different fields and in between them, there are three fields and, therefore, the possibility of the defendants encroaching upon two acres of land adjacent to Gat No.658 does not at all arise. The Appellate Court has also held that the plaintiff was required to show that Gat No.673 was formed out of Survey No.204 or any other field towards which the plaintiff had perfected the tenancy and ownership. It has held that there is no evidence to hold that the plaintiff was the owner of Survey No.207, which was converted into Gat No.673 during consolidation.

In view of this, the view taken by the Appellate Court is a possible view of the matter. Thus, no substantial question of law arises in this second appeal.

The second appeal is dismissed.

Consequently, upon dismissal of the second appeal, the civil applications filed in this second appeal

do not survive and the same stand dismissed as such.

(R.K.DESHPANDE, J.)

PD Lanjewar