

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

**SECOND APPEAL NO.668 OF 2010
WITH
CIVIL APPLICATION NO.1803 OF 2011**

Shri. Krishna Ganpat Yewale & Anr. Appellants

Vs.

Shri. Mahadu Baburao Yewal & Anr. Respondents

Mr. S.V. Sadavarte alongwith Mr. Siddharth Gadve i/by Mr. Vijay Killedar, Advocate for the Appellants.

Mr. A.V. Anturkar, Senior Advocate alongwith Mr. Tanaji Mhatugde i/by Mr. S.B. Deshmukh, Advocate for the Respondents no.1 and 2.

**WITH
SECOND APPEAL NO.283 OF 2011**

Shri. Mahadu Baburao Yewal & Anr. Appellants

Vs.

State of Maharashtra & Ors. Respondents

Mr. A.V. Anturkar, Senior Advocate alongwith Mr. Tanaji Mhatugde i/by Mr. S.B. Deshmukh, Advocate for the appellants.

Mr. S.V. Sadavarte alongwith Mr. Siddharth Gadve i/by Mr. Vijay Killedar, Advocate for the respondents no.2 and 3.

Coram : Smt. R.P SondurBaldota, J.

Date : 28th January, 2015

P.C.

1 The appellants in Second Appeal No. 668 of 2010 are original defendants no.2 and 3. The appellants in Second Appeal No.283 of 2011 are the original plaintiffs. Both the appeals challenge the judgment and order dtd.5th August, 2010 passed by the lower appellate court partly allowing the appeal, setting aside the decree of the trial court of dismissal of the suit and partly allowing the suit with declaration that (i) the original plaintiffs are the owners of gat nos. 131 and 133 and (ii) the mutation entry no.502 in respect of survey no.361 and 373/7/9 is void and illegal. The lower appellate court also granted perpetual injunction to restrain the appellants from obstructing the respondents' possession of Gat No.121 and 123. The claim of the original plaintiffs in respect of survey No.374 was however dismissed.

2 Both the appeals are being disposed off by common order. The original defendants no.1 and 2 shall hereinafter be referred to as the appellants and the original plaintiffs as the respondents.

3 The respondents filed Regular Civil Suit No. 986 of 2000 claiming that they are co-owners along with the appellants in respect of the ancestral properties at Gat no.121 (survey No.373/1, Gat No.123 (survey No.369) and Gat No.126 (survey No.374). According to them, the lands were acquired by their grandfather- Babaji Yewale, who died leaving behind his son Babu and widow- Rakhmabai. The name of Babu was recorded in the revenue records by mutation entry no.157, which was certified on 23rd April, 1930. Babaji had been cultivating the suit properties and on his death, the respondents being his legal heirs came in possession of the suit properties and cultivation thereof. It is alleged by the respondents that in the year 1950, mutation no.502 was recorded mutating the name of appellant no.1 in the record of rights in respect of the properties at Gat No.121 and 123. This mutation was effected without notice to Babu. Then in the year 1960, appellant no.1 filed application dtd. 22nd April, 1960 for recording the name of original defendant no.3, Laxmi in respect of the properties at Gat nos.121 and 123. This mutation was already carried out without notice to the father of the respondents. It is the further allegation of the respondents that the revenue records treated Gat no.126 as government waste land, as father of the respondents had

failed to pay the land revenue. Even this was done without his knowledge. The respondents learnt about the mutation for the first time in January, 1995 when they obtained certified copies of 7/12 extracts. They filed Revision Application No.5 of 1996 before the Sub Divisional Officer, that application was dismissed and the appeal preferred by the respondents being R.T.S. No.53 of 1996 was also dismissed. The respondents then on 14th September, 1999 preferred R.T.S. Revision before Additional Commissioner, which has since been pending. The respondents contended in their complaint that entries and mutation in the revenue record in the name of appellant no.1 and Laxmibai were made without following due process of law and hence cause of action arose on 5th June, 2000, when appellant no.1 and Laxmibai threatened them of dispossession. Therefore, they filed suit herein for declaration that the mutations in the revenue record are void and not binding on them and for a declaration of ownership of the suit properties along with perpetual injunction to restrain them from disturbing their possession of the suit properties.

4 The appellant filed written statement baldly denying the claim of ownership by the respondents. Though they denied title of the respondents, the appellants did not either make a claim to the suit property for themselves or

contended that it was owned by anybody else. The bald denial in the written statement is no denial at all. In fact, there was no challenge to the title claimed by the respondents. The trial court had permitted the appellants to lead extensive evidence on their claim of title to the suit properties, though there was no pleadings made to that effect. On the basis of the evidence, the trial court had dismissed the suit of the respondents. Being aggrieved by the judgment and decree of the trial court, the respondents had preferred appeal being Civil Appeal No.326 of 2006 to the District Court. By the order impugned in the appeal, the District Court held that the respondents had proved that the properties at Gat nos. 121 and 123 are the ancestral properties and the mutation entries recorded in the name of the appellants was bad for want of notice and was without following due process of law. The appellate court proceeded to grant declaration of ownership in respect of the suit property to the respondents. In their evidence, the respondents had deposed about the manner in which their predecessor purchased the suit properties and its devolution on the respondents. Based on that, the lower appellate court partly decreed the suit in respect of Gat No.121 and 123. It however denied relief in respect of Gat No.126.

5 In view of the fact that the appellants had not even claimed any exclusive right to the suit properties in their pleadings, there can be no question of challenge to the title of the respondents to the suit properties by them. The respondents have claimed that they have common share and as such would be entitled to a share in the suit properties. In the circumstances, there is no question much-less substantial arising for consideration of this court. In view of the declaration of title, the relief consequential thereto of injunction had to follow. Thus there is no infirmity in the decision of the lower appellate court. Hence, Second Appeal No. 668 of 2010 is dismissed.

6 The appeal filed by the respondents i.e. Second Appeal No.283 of 2011 is to challenge the finding of the courts below as regards the land at Gat No.126 and exclusion of the property for partition. The courts below have held that as the revenue was not paid by Balu, the Government by the order dtd.28th January, 1932 of the Prant Officer took back the land. This change was recorded by the mutation entry No.189. Consequently the land did not belong to the family and as such not available for partition. The respondents have not challenged the return of the property and the order of the Prant Officer. In the circumstances, the courts below have

correctly appreciated the question. Hence, Second Appeal No.283 of 2011 is dismissed.

7 Mr. Sadavarte requests for continuation of the ad-interim order in the appeal proceedings. Mr. Anturkar, the learned senior advocate for the respondents states on instructions that the respondents do not intend to create any third party rights in respect of the suit property. In view of the statement made, the request for continuation for ad-interim relief is rejected.

8 In view of dismissal of the Second Appeals, the Civil Applications do not survive. The same are accordingly disposed off.

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