

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 429 OF 1993

1. Changdeo Babu Gaikwad
@ Dada Baburao Gaikwad **APPELLANT/**
[since deceased Thr. L.Rs.] **[ORI. PLAINTIFF]**

1-A. Suresh Changdeo @ Dada Gaikwad
Age : 50 Yrs., Occ. Agril.,
R/o : Near Sai Mandir,
Kalyanseth Road, Dombiwali (East),
Mumbai.

1-B. David Changdeo @ Dada Gaikwad
Age : 43 Yrs., Occ. Agril.,
R/o : Walki, Tq. and
Dist. : Ahmednagar
Through its POA
Ananda Waman Gaikwad
Age : 55 Yrs., Occ. Agril.,
R/o : Walki, Tq. and
Dist. : Ahmednagar

V E R S U S

1. Bhaskar Ratnakar Gaikwad
Age : 45 Yrs., Occ. Service,
R/o : H.No. 100, Wanawdigaon,
Dist. Pune.

2. Prabhakar Ratnakar Gaikwad
Age : 41 Yrs., Occ. Service,
R/o : H.No. 100, Wanawdigaon,
Dist. Pune.
3. Paraji Waman Gaikwad
Age : 71 Yrs., Occ. Carpenter,
R/o : Walki, Tq. and
Dist. : Ahmednagar.
4. Shivaji Vithoba Bothe
Age : 50 Yrs., Occ. Agril.,
R/o : Walki, Tq. and **RESPONDENTS/**
Dist. : Ahmednagar. **[ORI. DEFTS. 1 TO 4]**
5. Bhamabai Changdeo @ Dada Gaikwad
Age : Major, Occ. Agril.,
R/o : Walki, Tq. and
Dist. : Ahmednagar.
5. Priti Dada Gaikwad (Daughter)
Age : 35 Yrs., Occ. Agril.,
R/o : Walki, Tq. and
Dist. : Ahmednagar. **RESPONDENTS**

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Mr. S.D.Kulkarni, Advocate for Appellants.

Mr. B.G.Kale, Advocate for R – 1 to 3.

Mr. R.R.Shaikh, Advocate for R – 4.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 16/06/2016

JUDGMENT :

1. The Appeal is filed against the Judgment and Decree of R.C.A. No. 550/1998 which was pending in the Court of the learned District Judge, Ahmednagar. This Appeal was filed by the original defendants of R.C.S. No. 54/1983 which was pending in the Court of the Civil Judge [Sr.Division], Ahmednagar. The Suit was filed by present appellant for relief of perpetual injunction. The trial court had given decree of injunction on merits and this decree is set aside by the first appellate Court. Heard both sides.

2. In short, the facts leading to the institution of the present Appeal can be stated as follows.

The Suit was filed in respect of the agricultural land G.No. 544 [old S.No. 261] situated at village Walki, Tahsil and district Ahmednagar. The total area of this land is 15.35 Hectors. This land was owned by defendant Nos. 1 and 2.

3. It is the case of the plaintiff that neither the father of defendant Nos. 1 and 2 nor the defendants personally cultivated the land at any time and they always got it cultivated through the tenants. It is contended that the land was given first to Paraji Waman Gaikwad, defendant No. 3 and to the father of the plaintiff namely Dada Babu Gaikwad for cultivation and the possession was handed over prior to 1956. It is contended that prior to 1956, on the appointed date, viz. 01/04/1957 under the provision of Bombay Tenancy Act, the father of plaintiff and defendant No. 3 became owners of this land. It is contended that under the said Act, defendant Nos. 1 and 2 had applied to the tenancy authority for possession and they had contended that they wanted to cultivate the land personally, but their application was rejected.

4. It is the case of the plaintiff that another proceeding u/s 32-G of the Bombay Tenancy Act was started and in that proceeding defendant No. 3 expressed that he was not ready to purchase the land and he made statement that he was giving up the possession. It is contended that due to this proceeding, defendant No. 3 is

not in possession of the land and he left the possession about 20 – 22 years prior to the date of the Suit. It is contended that due to such act of defendant No. 3, the entire land came in possession of the plaintiff and he started cultivating the entire land as tenant.

5. It is the case of the plaintiff that when plaintiff was in possession under aforesaid rights, defendant Nos. 1 and 3 sold the land to defendant No. 4 for the consideration of ₹ 15,000/- [Rupees Fifteen Thousand] on 12/03/1982. It is contended that this sale deed is not binding on the plaintiff and possession was also not given to the defendant No. 4 as the possession was with the plaintiff. It is contended that defendant No. 4 is causing obstruction to the possession of the plaintiff over the suit property, so the cause of action has taken place. The relief of injunction was claimed against the defendants on the basis of aforesaid pleadings.

6. Defendant No. 4, the purchaser filed Written Statement and contested the matter. He denied the aforesaid contentions. He contended that he has purchased half portion of the land, which was in the past

with defendant No. 3 for cultivation. He contended that in the proceeding started u/s 32-G of the Bombay Tenancy Act, defendant No. 3 had given statement that he had no desire to purchase the land and he had returned the possession to the landlord. It is contended that due to this circumstance, the possession of the portion which was with defendant No. 3 came to the landlord and then under sale deed dated 12/03/1982, defendant Nos. 1 and 2 sold this land for lawful consideration to the defendant No. 4. He contended that defendant No. 3 has no concern with this transaction. He has denied that the plaintiff is in possession of this portion and plaintiff has become owner in view of the provisions of the Bombay Tenancy Act. He denied that there is cause of action to the Suit.

7. Defendant No. 4 further contended that the entire land was initially owned by Ratnakar Gaikwad. He contended that father of plaintiff namely Ratnakar and defendant No. 3' father were cousins. It is contended that half portion was being cultivated by defendant No. 3, but as the relative of the owner, and the remaining half portion was cultivated by the father of the plaintiff, but

also as cousin brother of owner and so no tenancy rights were created. It is contended that due to these circumstances in a proceeding filed u/s 32-G of the Bombay Tenancy Act, defendant No. 3 admitted that he was not tenant and then the land which was with him, northern portion, was shown to be given to the landlord and this portion is purchased by defendant No. 4.

8. On the basis of the aforesaid pleadings, Issues were framed by the trial Court. Both sides gave evidence. The trial Court had held that the plaintiff was in possession due to the record of dispute which was going-on between the plaintiff and defendant Nos. 1 and 2 in the past and his possession was over entire area of aforesaid land. The first appellate Court has considered the other record like record of tenancy Court in respect of statement given by defendant No. 3 and has held that the defendant No. 3 was in possession of half portion and in a proceeding which was started u/s 32-G of the Bombay Tenancy Act had admitted that he was not willing to purchase the said portion and he has returned back the possession to the landlord, the defendant Nos. 1 and 2. The first appellate Court has held that the said

portion was with defendant No. 3 right from beginning and so the plaintiff was not in possession of this portion.

9. This Court [other Hon'ble Judge] admitted the Appeal but no substantial questions of law were formulated. The learned counsel for the appellant was allowed to argue on following points which are treated as substantial questions of law.

[i] Whether it was necessary for the Courts below to refer the dispute to the Tenancy Court ?

[ii] Whether the Civil Court has jurisdiction to decide such dispute in view of Section 85 of the Bombay Tenancy Act ?

10. At the out set, it needs to be mentioned that the present appellant had approached Civil Court for relief of injunction. The Suit was for simplicitor injunction on the contention that the plaintiff was in possession of the suit land. In view of this submission, no issue with regard to the tenancy was involved. Thus, there was no question of raising doubt about the jurisdiction of the Civil Court in considering such Suit and

also there was no question of sending the matter or any point to the Tenancy Court for reference.

11. In the plaint itself it is admitted that the father of plaintiff and defendant No. 3 were cultivating the land of the father of defendant Nos. 1 and 2. The 7/12 extract is produced on record at Exh. 4 and this document was produced along with the plaint by the plaintiff himself. This document shows that defendant No. 3 was in possession of half portion of the land and plaintiff's father was in possession of half portion of the land. They were separately cultivating their portions as per this document. Admittedly, father of defendant Nos. 1 and 2 was the owner of the land at the relevant time. The names of defendant Nos. 1 and 2 were entered in the ownership column after the death of their father Ratnakar. There is no record to show that the proceeding was started by the plaintiff for purchasing the property under the provisions of the Bombay Tenancy Act though there was one proceeding of other nature between the plaintiff and defendant Nos. 1 and 2. The dispute is not really in respect of the portion which was in possession of defendant No. 3 and from the revenue record it can be

said that the defendant No. 3 was in separate possession till the year when he gave the statement before the Tenancy Court that he was only cousin of the owner and so he was not tenant. He had admittedly given statement that he had handed over the possession to the owner. In view of the aforesaid revenue record, Exhs. 4 to 8, it can be said that defendant No. 3 was in possession of the portion which is shown to be sold to defendant No. 4 and he had returned the possession to the owner. In view of the provisions of the Maharashtra Land Revenue Code, it needs to be presumed that every year enquiry was made by the concerned authority to ascertain as to who was cultivating the land and accordingly the entries were made in crop cultivation column. In view of the aforesaid record, burden was heavy on the plaintiff to prove that he was in possession of the portion which was shown to be cultivated by defendant No. 3 as per the revenue record. He failed to discharge that burden. So, the points are answered against appellant.

12. So far as the oral evidence is concerned, it can be said that there is word against word. Further, there is evidence of defendant No. 3 in support of the

case of defendant No. 4 which is in accordance with the aforesaid record. Thus, the oral evidence given by the defendants is consistent with the record and due to such evidence, there was no other alternative than to hold that defendant No. 4 got the possession and defendant No. 4 is in possession of the portion purchased by him under the registered sale deed. The finding is on question of fact. This Court holds that no interference is possible in the decision given by the first appellate Court.

13. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]