

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 672 OF 2012

Mohanrao s/o. Jaiwantrao Jagtap

....Appellant.

Versus

Venkat s/o. Maroti Jagtap & Anr.

....Respondents.

Mr. Milind Patil, Advocate for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 8th March, 2016.

ORDER :

1. The appeal is filed against judgment and decree of R.C.S. No. 269/2000, which was pending in the Court of Civil Judge, Junior Division, Ahmedpur, District Latur. The suit was filed for relief of declaration of ownership, possession and mesne profit. The Trial Court has dismissed the suit of the appellant. Regular Civil Appeal No. 52/2011 (old R.C.A. No. 58/2005) is also dismissed by the District Court and so that decision is also challenged. Heard the learned counsel for appellant.

2. The suit was filed in respect of land Gat No. 36 (old Survey No. 7), admeasuring 2 Hectar 24 R. situated at village Kharabwadi, Tahsil Ahmedpur. It is the case of appellant, plaintiff that the suit property was ancestral property of Mataji. Mataji

had three sons from first wife and one son from second wife. It is the case of plaintiff that both the families of Mataji were living together in Hindu Joint Family. It is contended that as the property was ancestral property of Mataji, all the four sons of Mataji had 1/4th share each in the suit property. It is the case of plaintiff that he is successor of Vithoba, son of Mataji from his second wife. It is contended that due to some incidents, aforesaid suit property had come to the share of plaintiff.

3. Defendant No. 2 is son of defendant No. 1. It is contended that one Maruti, predecessor of these defendants had come to the village and land was in permissive possession of Maruti. It is contended that false revenue record was created to show the ownership when the defendants or Maruti had no right or interest in the suit property. The defendants denied the aforesaid contentions and contested the suit by filing written statement. They claimed that they are the owners of the suit property.

4. Issues were framed on the basis of aforesaid pleadings. The suit was filed for possession on the basis of title. The judgment delivered by the Trial Court shows that plaintiff failed to prove that the suit property was owned by Mataji or his

sons from the two wives. Even the record of implementation of consolidation scheme was not produced. The burden was heavy on the plaintiff to prove his title as admittedly he is not in possession. Even if it is presumed that old Survey No. 7 was given Gat No. 36, that cannot help plaintiff. Atleast from the year 1991-92 as per the revenue record, the defendants are shown as owners of Survey No. 7A. In view of the area of the lands Survey No. 7A and Gat No. 36, there is clear probability that this new number was given as gat number during implementation of consolidation scheme. As there is nothing with the plaintiff to prove the title, the Trial Court dismissed the suit and the First Appellate Court has confirmed the decision. There is concurrent finding on the question of fact and no substantial question of law as such is involved in the matter.

5. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/