

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

Second Appeal No. 206 of 1991

1) Ismail @ Gunda Barhansaheb Dhanure
Since deceased through his legal
representatives:

1-A) Shaikh Sadat s/o Ismail,
Age 63 years,
Occupation : Agriculture.

1-B) Shaikh Bashir s/o Ismail,
Age 60 years,
Occupation : Agriculture.

1-C) Shaikh Niymatbee w/o Abdul Gani,
Age 55 years,
Occupation : Agriculture.

2) Neelofar d/o Sadat-Shaikh,
Age 28 years,
Occupation: Education.

All R/o Bevnal,
Taluka Shirur Anantpal,
District Latur.

At Present Opp. Manjara
Hospital, Gandhi Market,
Latur, Taluka and District
Latur.

.. Appellants.

Versus

* Shaikh Mahboob @ Pasha
S/o Dadabhai Dhanure
Since deceased through his
legal representatives :

- 1-A) Shaikh Jameerbee w/o Maheboob,
Age 72 years,
Occupation : Agriculture.
- 1-B) Shaikh Ameensab s/o Maheboob,
Age 50 years,
Occupation: Agriculture.
- 1-C) Shaikh Nijam s/o Maheboob,
Age 48 years,
Occupation: Agriculture.
- 1-D) Shaikh Bijanbee d/o Maheboob,
Age 45 years,
Occupation: Agriculture.
- 1-E) Shaikh Ujalabee d/o Maheboob,
Age 42 years,
Occupation: Agriculture.

All R/o Bevnal,
Taluka Shirur Anantpal,
District Latur.

.. Respondent.

Shri. P.R. Katneshwarkar, Advocate, for appellants.

Shri. Anil M. Gaikwad, Advocate, for respondent No.1(C).

CORAM: T.V. NALAWADE, J.

DATE : 5th APRIL 2016

JUDGMENT:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.104/1982 which was pending in District Court Latur. The appeal was filed by

the present respondent, original defendant of Regular Civil Suit No.199/1975 which was pending in the Court of the Civil Judge, Junior Division, Nilanga. The suit filed by the present appellant for relief of perpetual injunction was decided in his favour by the trial Court and this decision is set aside by the first appellate Court. Both the sides are heard.

2) The suit was filed in respect of agricultural land admeasuring 9 acres 30.1/2 gunthas, which is eastern part of Survey No.24 situated at village Ankulga Syed, Tahsil Nilanga. The plaintiff has given hand sketch map of Survey No.24 to show the location of the suit property. It is the case of the plaintiff that the property had come to the plaintiff and defendant from their father and so they had equal share in Survey No.24. It is contended that many years prior to the date of the suit the plaintiff and defendant had partitioned the property between them and eastern part of the suit property was allotted to the share of the plaintiff. It is contended that from the western part the defendant sold 7 acres 7 gunthas through registered sale deed dated 27-3-1954 and then remaining part was

also sold by the defendant and so the defendant has no property in Survey No.24. It is contended that since the date of partition, the plaintiff has been in exclusive possession of the suit property and the defendant has no concern whatsoever with the suit property. It is contended that due to collusion between the defendant and revenue officers, the name of the defendant is continued in the revenue record and due to that the defendant is disturbing the possession of the plaintiff over the suit property. Relief of injunction was claimed.

3) The defendant contested the suit by filing written statement. He admitted relationship but he denied that Survey No.24 had come to the plaintiff and defendant from their father. It is the case of the defendant that in the year 1954 he sold western portion of 7 acres 7 gunthas to one Apparao under sale deed and since then the remaining portion of 12 acres and 14 gunthas is with the defendant and that portion is given Survey No.24/A. It is contended that the sold portion is given Survey No.24/B and the plaintiff had no concern with Survey No.24.

4) The issues were framed on the basis of the aforesaid pleadings. Both the sides gave evidence. The trial Court decreed the suit due to circumstance that in the past sale deed of some portion of the western side was executed by the defendant but the remaining portion was not sold. The circumstance that other properties were sold is also considered. The first appellate Court has held that the plaintiff has failed to prove that the property had come to the plaintiff and defendant from their father. The first appellate Court had held that the property was owned by the defendant and at no time the name of plaintiff was entered in possession column and so there was no possibility of giving the relief of injunction in favour of the plaintiff.

5) There is record starting from the year 1954-55 like Khasara Pahani Patrak and the record shows that right from beginning the defendant was shown as owner and person in possession of entire Survey No.24. The record shows that after selling some property by the defendant survey number was divided into two numbers like Survey Nos. 24/A and 24/B. Right from the year 1955

the defendant was shown in possession of entire portion of 12 acres and 14 gunthas which is the area of Survey No.24/A. Even on the date of the suit, 7/12 extract shows that entire area was in possession of the defendant as owner. At no point of time name of the plaintiff was entered even in cultivation column.

6) The case of the plaintiff that the parties had divided the property between themselves does not look probable as from the total area, area of 19 acres, 7 acres land is sold by the defendant and the record does not show that prior to the date of transaction made by the defendant, the property was divided into two equal portions. If there was partition, the parties would have created equal share.

7) The parties belong to Muslim community. To show that, the plaintiff has share in the suit property it was necessary for the plaintiff to establish that the property was initially owned by the father of the plaintiff and then the property was entered in the name of the defendant. There is no such record. Further for getting

relief of injunction plaintiff was required to prove the possession. The plaintiff could not prove possession on the basis of document or oral evidence. In view of this circumstance this Court holds that the first appellate Court has not committed any error in allowing the appeal and dismissing the suit. The finding given by the first appellate Court is finding of question of fact.

8) While admitting the appeal this Court had observed that substantial questions of law can be formulated on the basis of Grounds A, B, D, F, H and I of the appeal memo. This Court holds that no substantial question of law as such is involved in the matter as the plaintiff was expected to prove his possession on the date of the suit.

9) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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