

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

SECOND APPEAL NO. 692 OF 2015

Shankar s/o Rakhmaji Dhangar & Anr. **APPELLANTS**
[ORI. DEFENDANTS]

V E R S U S

Udhav Ganpat Wagha **RESPONDENT**
[ORI. PLAINTIFF]

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Mr. S.V.Natu, Advocate for Appellants.

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CORAM : T.V.NALAWADE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :-

1. The Appeal is filed against the Judgment and Decree of R.C.S. No. 245/1985 which was pending in the Court of the Civil Judge [Jr. Division], Tuljapur, district Osmanabad and also against the Judgment and Decree of R.C.A. No. 149/1991 which was pending in the Court of the District Judge at Osmanabad. Heard learned counsel for the appellant.

2. The Suit was filed by present appellant for relief

of perpetual injunction against the present respondents in respect of agricultural land bearing G.No. 124/2 admeasuring 2 H. 88 R. situated at Baswantwadi, Tahsil Tuljapur, district Osmanabad. The total area of this land is 14 Acres 38 R. and its previous number was S.No. 53/1. The entire survey number was owned by one Vyankatesh @ Prabhakar Kulkarni.

3. After coming into force of Maharashtra Agricultural Lands [Ceiling on Holdings] Act, 1961, it was realized that Vyankatesh was in possession of excess holding. It is contended that in the year 1971, proceeding was started under the aforesaid Act and the authority allotted the excess land which was held by Vyankatesh to 4 landless persons by order dated 24/05/1972. It is the case of the plaintiff that possession was handed over by the Tahsildar, Tuljapur to him of the suit property and possession receipt was prepared. It is contended that the name of plaintiff was entered in the revenue record and from the date of possession, he started enjoying the suit property as the owner.

4. It is the case of plaintiff that the defendants, who are real brothers inter-se, have no concern with the suit property but they tried to obstruct the possession of plaintiff over suit property on 30/09/1985 and cause of action took place for the Suit. Relief of injunction was claimed by making aforesaid contentions.

5. The defendants filed their Written Statement and contested the matter. They contended that the defendants

were in possession of the suit property as tenants and in the year 1963 in R.C.S. No. 24/1963 one decree was made in their favour and so they became owner of the suit property. It is their case that they were not called by the authority created under Ceiling Act and so the orders made by the authorities are not binding on them. They have denied that the possession was handed over on 24/05/1972 by the authority.

6. Issues were framed on the basis of the aforesaid pleadings. Both sides gave evidence. The Trial Court considered both oral and documentary evidence. The record shows that only after the decision of R.C.S. No. 24/1963, which was filed after coming into force of the Ceiling Act, the names of defendants were entered in the revenue record. The defendants tried to resist the Suit by contending that as their names were entered in the revenue record, hearing ought to have been given to them by the authority. Admittedly, the order was made by the authority under the aforesaid Act, the land was taken over and the possession was given to the landless persons like plaintiff. The record shows that the aforesaid Suit filed in the year 1964 was collusive in nature as the decree was made due to compromise. As on the relevant date, Vyankatesh was holding land more than the permitted limit, the decree made in favour of the defendants in that Suit can not make much difference and no title could have been passed in favour of the defendants after the relevant date. The revenue record shows that after making of the order by the competent authority and handing over of the possession, the name of the plaintiff was recorded in both

ownership and cultivation column. Thus, on the date of the Suit, the plaintiff was shown in possession and this record, is consistent with the case of the plaintiff.

7. When there is Suit filed for relief of injunction, the Court is expected to consider only lawful possession of the plaintiff and ascertain as to whether there is cause of action to the Suit. In view of the limited scope of such Suit, the Courts below have held that the plaintiff is entitled to the relief of permanent injunction. No substantial question of law as such is involved in the matter. There are concurrent findings of the Courts below on aforesaid question of fact.

8. In the result, Second Appeal stands dismissed. In view of the dismissal of the Appeal, C.A. No. 11443 of 2006 also stands disposed of.

[T.V.NALAWADE, J.]