

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

Second Appeal No. 402 of 2006

Taibai w/o Nivrutti Ubale
Since deceased, through her
legal representative:
Rajendra s/o Yeshwanta Khandare. .. **Appellant.**

Versus

Ramesh s/o Govinda Kamble
And Others. .. **Respondents.**

Shri. S.V. Chandole, Advocate, holding for Shri. V.G.
Sakolkar, Advocate, for appellant.

Shri. M.G. Kasturkar, Advocate, holding for Smt. M.A.
Kulkarni, Advocate, for respondent Nos.1 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 19th JULY 2016

ORDER:

1) The Appeal is filed by the plaintiff of Regular Civil Suit No.271/1995 which was pending in the Court of the Civil Judge, Senior Division, Hingoli against the judgment and decree of the trial Court and the decision of the District Court delivered in Regular Civil Appeal No.87/2000. Both the sides are heard.

2) The suit was filed in respect of 8 acres 4 gunthas portion of agricultural land from Survey No.32 situated at village Limbala. It was Gairan land of the State Government. It is the case of the plaintiff that under the provisions of the Government Waste Land (Disposal) Rules, 1961 the suit property was allotted to her and such order was issued by Tahsildar. It is her case that possession of the property was actually given and the mutation was sanctioned in her favour in the year 1975. It is her case that her name was entered in the crop cultivation column of the 7/12 extract and since the date of allotment she has been in possession of the suit property. It is contended that defendant No.1 had filed Regular Civil Suit No.149/1994 against her for relief of injunction in respect of this property but the suit was dismissed and no relief was given in favour of the defendant No.1. It is contended that in spite of decision of the previous suit, the defendants are trying to obstruct the possession of the plaintiff over the suit property. Relief of perpetual injunction was claimed.

3) Defendants filed joint written statement and they denied the aforesaid contentions. They contended that suit property was allotted to their father and mutation was effected in favour of their father in the year 1976. Their father is dead. It is their case that as per the record land admeasuring 8 acres was allotted to the plaintiff under the said scheme of allotment from Survey No.27. It is contended that the plaintiff is trying to grab the property allotted to the defendants and with that intention she has filed false suit.

4) On the basis of aforesaid pleadings issues were framed. Both the sides gave evidence. In view of nature of record of allotment, there was cloud on the title of the plaintiff but she did not make revenue authorities, Government party to the proceeding and no relief of declaration was claimed. Due to this single circumstance also relief could have been refused.

5) The trial Court has considered the relevant revenue record and it is held that the suit property was allotted to the father of the defendants and the plaintiff

was allotted some portion from Survey No.27. The finding is given that there was some mistake committed and due to the mistake name of plaintiff was entered in the revenue record of the land Survey No.32 but this mistake was subsequently corrected by the revenue authority and so it cannot be said that the plaintiff was in possession of portion of Survey No.32. This finding is confirmed by the first appellate Court.

6) In support of the case that the portion of Survey No.32 was allotted to the plaintiff, the plaintiff has examined herself and her evidence is consistent with the pleadings. She has placed reliance on the revenue record like panchanama which is at Exhibit 50. This record shows that portion of Survey No.32 was given in possession of the plaintiff and it was given plot No.23. Mutation was also sanctioned accordingly on 20-10-1965. Plaintiff has examined one Ananda Kamble to show that she has been in possession of some portion of Survey No.32.

7) As against the aforesaid evidence, there is oral evidence of defendant Ramesh Kamble which is consistent

with the pleadings in the written statement. He has examined one Kundlik in support of his case that he is in possession of portion of Survey No.32 and this portion was allotted to the father of the defendants. Then there is the record produced like allotment list at Exhibit 60 showing that in place of portion from survey No.32, plaintiff was given portion from Survey No.27 admeasuring 8 acres and the father of the defendants was given similar portion from Survey No.32. There is copy of mutation which was sanctioned on 14-5-1996 and it is to the effect that by mistake in the past, the portion of Survey No.32 was shown to be given to the plaintiff but she was given portion from Survey No.27. At Exhibit 62, there is original letter of allotment in favour of father of the defendants and it shows that portion of Survey No.32 was allotted. On the basis of this allotment entry was expected to be made and there is endorsement dated 26-7-1976 showing that mutation No.90 was effected on that basis. At Exhibit 63 there is copy of mutation which was sanctioned in the year 1972 showing that portion of 8 acres was allotted to father of the defendants. 7/12 extracts are produced at Exhibit 73 showing that name of defendant was entered

right from the year 1972 onwards for the portion from Survey No.32. Similarly 7/12 extract in favour of the plaintiff is there to show that her name was also entered in the revenue record of Survey No.32 upto the year 1993-94.

8) On the basis of the aforesaid record the Courts below have drawn inference that there was some mistake committed at the time of making mutation and creating record of possession and when some portion of Survey No.27 was allotted to the plaintiff her name was shown in the revenue record of Survey No.32. Survey Nos.32 and 27 are adjacent to each other. Admittedly, aforesaid correction made by the authority who had made the allotment was not challenged by the plaintiff. On the date of the suit there was name of the plaintiff in the revenue record but there were aforesaid circumstances. There was record in favour of the defendants also as mentioned above showing possession. Civil matters are required to be decided on the basis of preponderance of probability. The Courts below have given finding that the plaintiff has failed to prove possession over the suit property as some

portion of Survey No.27 was allotted to her and that portion was given in her possession. Circumstances that in the past suit was filed by defendants against the plaintiff to get relief of injunction and the said suit was dismissed cannot come in the way of the Court to decide entitlement of the plaintiff to get relief of injunction. There are concurrent findings of the Courts below. Though this Court had expressed that substantial questions of law can be formulated on the basis of grounds IX and XV mentioned in the appeal memo, there is no substantial question of law as such involved in the matter. The appellant was asking to re-appreciate the material which is not possible in the second appeal. In the result, the appeal is dismissed.

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

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