

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

SECOND APPEAL NO. 164 OF 2015

Nadeem Mohammad Azmatullah **APPELLANT**

V E R S U S

The Dy. Director of sports and
Youth Service, Aurangabad
Division, Aurangabad & Anr. **RESPONDENTS**

.....

Mr. M.A.Latif, Advocate for Appellant.

Mr. S.D.Kaldate, A.G.P. for R.No. 2 – State.

.....

CORAM : T.V.NALAWADE, J.

DATE : 10th MARCH, 2016

ORDER :-

1. The Appeal is filed against the Judgment and Decree of R.C.A. No. 102/2014 which was pending in the District Court at Aurangabad and also against the Judgment and Decree of R.C.S. No. 666/2011 which was pending before the Civil Judge [Sr. Division] at Aurangabad. Heard learned counsel for the appellant for admission purpose.

2. The Suit was filed in respect of 3 properties viz. portion of 1 Acre 22 gunthas of G.No. 23 situated at Padegaon, another portion of 17 gunthas from the same Gat number and portion of 8 Acres 17 gunthas of G.No. 10 situated at Ravraspura, Tahsil and District Aurangabad.

Perpetual injunction was claimed against the Director of Sports, Govt. department, Aurangabad and also against the State Govt. by contending that they were obstructing in the possession of appellant over these properties.

3. It is the case of the plaintiff that he has purchased 17 gunthas portion out of G.No. 23 under registered sale deed in December, 2010 from one Kondiram. It is contended that portion of 1 Acre 22 gunthas was belonging to Sakhrabai, Baburao and Kachru and similarly portion of 8 Acres 7 gunthas from G.No. 10 of Ravraspura was owned by the aforesaid 3 persons. It is contended that under sale deed of 29/01/2011, possession was given by these 3 persons to the plaintiff and then compromise decree was made by the Court in view of the settlement when the dispute started between 3 persons on one side and the plaintiff on other side (in R.C.S. No. 305/2011). It is contended that on the date of the sale deed, the properties were given in possession of the plaintiff and he has erected compound wall around the properties for protecting his possession.

4. It is the case of the plaintiff that the defendants have no concern whatsoever with the aforesaid properties, but on 14/08/2011 and 17/08/2011 defendant No. 1 – Sports department made attempt to interfere in the possession of plaintiff over the suit properties and cause of action arose.

5. Defendants contested the Suit by filing Written

Statement. The defendants contended that the properties viz. G.No. 10 admeasuring 4 Acres 4 gunthas situated at Ravraspura and portion of 1 Acre 22 gunthas from G.No. 23 of Padegaon were owned by one Pig Rearing Co-op. Society. It is contended that this society has gone into liquidation and one Mr. Karlagikar was appointed as liquidator of this institution. It is contended that as defendant No. 1 was in need of some land, correspondence was made by the Govt. with the said society and the said property was sold to defendant No. 1 on 28/08/1984. It is contended that since then the said property is in possession of defendant No. 1. It is contended that since then defendant No. 1 has been using the property by keeping its material viz. scrap material of motor vehicles and electricity connection is also taken on this property by defendant No. 1.

6. On the basis of the aforesaid pleadings, issues were framed. Plaintiff examined some witnesses in support of his case and he produced some documents viz. compromise document which was between him and Sakhrabai and also produced report given to the police station and the panchanama prepared by the authority to show that he was in possession of the disputed property. He produced some photographs of the property to show that he has painted his name on the boundary wall.

7. The Trial Court held that the plaintiff failed to prove his possession over the properties, much less referable to lawful title. As the defendants had come with the case that the plaintiff was trying to grab the property by making

encroachment and there was the evidence to show that the property is purchased by the Govt., the relief of injunction is refused by the trial Court. First appellate Court has confirmed this finding.

8. The record which was considered by the trial Court and the first appellate Court was produced before this Court [certified copies]. Though some record was produced in the Court viz. compromise document, when the title of Sakhrabai itself is disputed, it was necessary for the plaintiff to show that on the so called date of sale made in his favour, Sakhrabai was owner of the property. No such record was produced by the plaintiff before the Courts below. Some record of correspondence between Sakhrabai and Municipal Corporation, Aurangabad was produced to show that Sakhrabai had made some construction on CTS Nos. 13,2/1, etc. This record can not prove that Sakhrabai was owner of the property. Further, the connection between the properties mentioned like city survey in this correspondence and the suit properties ought to have been established, but that is not established.

9. The plaintiff did not produce the sale deeds mentioned in the plaint, but the defendants produced sale deed executed by the Liquidator of aforesaid society. For defendant No. 1 its officer has given evidence and the sale deed is produced at Exh. 102. It is in respect of portion of G.No. 23 and G.No. 10. Govindrao, the official liquidator of the Society, is examined to prove the sale deeds. Evidence is given by this witness that the possession was with the society

and it was handed over to the defendants under the sale deed.

10. The aforesaid discussion shows that there is virtually nothing with the plaintiff to prove that he is owner or the aforesaid Sakhrabai was owner of the suit properties at any time. In spite of mentioning the sale deeds, the sale deeds are not produced on record and relevant revenue record of Sakhrabai was not produced. Learned counsel for the appellant placed reliance on the Judgment in the case of **Krishna Ram Mahale (dead) by his L.Rs. Vs. Mrs. Shobha Venkat Rao reported in AIR 1989 Supreme Court 2097** and it was submitted that the plaintiff is in settled possession and the defendants can not be allowed to interfere in the possession of the plaintiff and they can follow the procedure established by law for taking possession. In the facts and circumstances of this case it can be said that there is no convincing evidence to show that the plaintiff is in possession of the suit properties. Some photographs are produced to show that walls are constructed surrounding some area and name of the plaintiff is written on the wall as owner. Due to this circumstance, it can not be inferred that the plaintiff is in possession of the entire area situated at different places. The Courts below have considered the material given by the plaintiff. The plaintiff has utterly failed to prove his lawful possession over the suit properties. As the property belongs to the Govt., if there is encroachment, under Land Revenue Code the encroachment can be removed. On the basis of the reports prepared by the revenue authorities, it can not be said that the plaintiff was actually in possession though he was

making attempt to encroach over the property. In this district the incidents of creating false record are comparatively more and the incidents of grabbing the properties of Govt. on the basis of such record are more. No substantial question of law as such is involved. The questions of facts were involved and there are concurrent findings of the Courts below.

11. In the result, Second Appeal stands dismissed.

12. In view of dismissal of Second Appeal, C.A. No. 4406 of 2015 stands disposed of.

[T.V.NALAWADE, J.]