

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

**Second Appeal No.639 of 2015
With
Civil Application No.14497 of 2015**

Vimal Uttam Ramgade.

.. Appellant.

Versus

Nandkumar Baburao Fand
And Others.

.. Respondents.

Shri. Shailesh S. Chapalgaonkar, Advocate, for appellant.

Shri. A.T. Kanawade, Advocate, for respondent Nos.1,2 &
5.

CORAM: T.V. NALAWADE, J.

DATE : 5th APRIL 2016

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.225/1998 which was pending in the Court of the Civil Judge Junior Division Kopergaon and also against the judgment and decree of Regular Civil Appeal No.50/2007 which was pending in the Court of District Judge-1 Kopergaon. Heard learned counsel for the plaintiff, appellant.

2) The suit was filed in respect of area of 20 x 20 ft from House Property No.308/A situated at Gajananagar, Kopargaon. Boundaries of this open space were given in the plaint. It is the case of the plaintiff that she had purchased this open space in the year 1995-96 from owner Ramchandra Fand for consideration of Rs.15000/-. It is her case that, her residential place is situated in the vicinity. It is her case that the defendants have no concern with the suit space but they are obstructing her possession over the suit space. Relief of injunction was claimed against the defendants.

3) The defendants contested the matter by filing written statement. They contended that entire Survey No.105/A1 was belonging to the Government and the Government had kept this space for landless persons. It is contended that about 30 years prior to the date of the suit, father of the defendants named Baburao Fand got space of 60 x 20 ft. and the suit space is part of that space. It is contended that some space, 20 x 20 portion, was given to Ramchandra and remaining space remained with defendants and their father. It is contended that

Ramchandra was not owner of the suit property and so no relief can be given in favour of the plaintiff. It was also contended that there was litigation bearing Regular Civil Suit No.909/2000 between Ramchandra and the defendants. It was contended that the land was not standing in the name of Ramchandra.

4) Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The appellant, plaintiff produced some record like tax receipts from the years 1995 to 1999. She examined herself to give evidence that she was in possession. It appears that Court Commissioner was appointed to ascertain the real state of affairs. This report is considered by the Courts below.

5) The evidence and the record which is discussed by the Courts below show that it is open space. Admittedly there is no record of allotment of this space made by the Government even in favour of the defendants. There is no record to show that Ramchandra was owner of this property. Further there was no registered sale deed executed in favour of the plaintiff by Ramchandra. Thus

there was no question of claiming any title to the suit property by the plaintiff. As it is open space belonging to the Government, it can be said that encroachment was not made by either Ramchandra or the plaintiff on this space. In what way the plaintiff got the property is not stated and so it cannot be said that the plaintiff was in possession of the suit property. Both the Courts below have observed that the plaintiff failed to prove that the disputed property was bearing No.308/A. In view of these circumstances, it was not possible to give relief of injunction in favour of the plaintiff. There are concurrent findings of the Courts below and no substantial question of law as such is involved. Nothing can be achieved by admitting the appeal. In the result, the appeal stands dismissed. Civil Application stands disposed of.

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

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