

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

14 SECOND APPEAL NO. 266 OF 2014

MAHADU TOPAJI RANWIR .. Appellant

VERSUS

KACHARU KRISHNAJI SONWANE .. Respondents

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Advocate for Appellant : Mr. Kamble Dinkar G.

Advocate for Respondent : Mr. A. B. Dhongade

CORAM : T. V. NALAWADE, J

DATE : 21st April, 2016

O R D E R :

1. The appeal is filed against the judgment and decree of Regular Civil Suit No.167 of 2006 which was pending in the Court of Civil Judge, Senior Division, Basmatnagar and also against the judgment and decree of Regular Civil Appeal No.32 of 2012 which was pending in the court of District Judge-1, Basmat, District Parbhani. The suit filed against the present appellant, original defendant, by the respondent, orig. plaintiff, for the relief of possession of encroached portion of 53 R from Gat No. 67 situated at village Kaudgaon Tq. Basmat is decided in his favour. Both the courts below have given concurrent findings in favour of the plaintiff. Heard learned counsel for the appellant defendant.

2. It is the case of the plaintiff that in the year 1976, Government had made allotment of some portions of *Gayran* which was bearing Survey No.20 (admeasuring 12 H 83 R) to needy persons and restricted ownership was given to them. It is contended that by the order of allotment, the plaintiff was given portion of 3 Acres 5 Gunthas and this property is part of Gat No. 57. It is contended that mutation was made accordingly in the year 1976 itself. It is contended that 2 Acres portion was given to the defendant in the same allotment which was on western side of portion of the plaintiff.

3. It is the case of the plaintiff that in the year 1999, the defendant demolished the boundary, common bandh lying between two lands and made encroachment. It is contended that when the T.I.L.R. measured the land on 26.04.2001, he found that there was encroachment of 53 R portion made by the defendant on the land of the plaintiff. It is contended that in spite of this circumstance, some order was made by the Tahsildar and due to that order, the defendant is claiming ownership over the encroached portion also. The plaintiff prayed for the relief of possession of that portion and also for the relief of recovery of mesne profit.

4. The defendant filed written statement and contested the matter. He denied that he made encroachment over the portion of the plaintiff as contended by the plaintiff. It is contended that the Government had allotted portions to different persons who were already in possession of the portions by making encroachment over Gayran. It is contended that the plaintiff was never given possession of portion of 3 Acres 5 Gunthas and right from beginning, the defendant has been in possession of the entire portion. It is contended that by effecting mutation (No. 594), the plaintiff is shown to be owner of Gat No. 57 but only to the extent of 63 R and the defendant is shown to be owner of portion of 1 H 20 R.

5. On the basis of aforesaid pleadings, issues were framed. Both sides gave evidence. Both sides produced the revenue record and initial record of mutations which were made on the basis of allotment orders made by the Government. The record of measurement made in the year 2001-2002 is also produced.

6. It is not disputed that the entire survey No.20 admeasuring 12 H 83 R was owned by the Government and under the orders of allotment, some persons were given

possession of the land as restricted owner. The revenue record shows that right from beginning, from the year of allotment, name of the plaintiff was entered as owner of 3 Acres 5 Gunthas portion. Name of the defendant was also entered as owner but it was for the area of 2 Acres portion. These entires were made as per first mutation No. 233. This mutation shows that due to the order made by the revenue authority of 1976, the allotment was made and so mutation was made. In support of this record, oral evidence is given by the plaintiff. The defendant admits that on the basis of possession which the persons were having, the allotment was made. In view of such case, the aforesaid entires need to be given due importance. Mutation No. 233 was never challenged by the defendant.

7. One witness Subhash (PW-3) has given evidence that when the land was measured in the year 2001-02, the plaintiff was found in possession of 72 R portion only, when he is owner of 3 Acres 5 Gunthas portion as per the revenue record. The relevant record like panchanam etc. is produced. Thus, during measurement, the defendant was found in possession of 53 portion belonging to the plaintiff. The defendant has not disputed that he is in possession of such portion and

he is claiming that restricted ownership is given to him in respect of this portion also. It appears that measurement of *pot hissas* was made and when actual possession of the defendant was found over more portion as mentioned above, another mutation No. 594 was made and area of plaintiff was shown to be reduced.

8. In view of the aforesaid record, it was necessary for the defendant to show that from prior to 1976, he was in possession of more area and some mistake was committed by the revenue authority in making allotment order. As the allotment made in favour of the plaintiff was never challenged, on preponderance of probability, the plaintiff has proved his case. Findings are on question of facts and measurement is not disputed by the defendant. The defendant has also not disputed that he is in possession of more portion than the portion shown in the allotment order of 1976. No substantial question of law as such is involved in the matter. In the result, the appeal is dismissed.

(T. V. NALAWADE, J.)

JPC