

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

902 SECOND APPEAL NO. 389 OF 2016
WITH CA/8511/2016 IN SA/389/2016

JAYESH DATTATRAYA AUTI AND ANR
VERSUS
SURESH GANPAT ABALE

...
Advocate for Appellants : Karpe Rahul R.
Advocate for Respondent : A.V. Rakh
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CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

ORDER :

1. The appeal is filed to challenge the order made on Exhs. 36 and 128 in Regular Darkhast No. 14/2005, which is pending in the Court of Civil Judge, Senior Division, Shrirampur. The execution proceeding is filed for execution of decree of possession given in favour of respondent - Suresh in Regular Civil Suit No. 103/2000. Heard both the sides.

2. The suit was filed by present appellants for relief of injunction in respect of 2 R. portion of C.T.S. No. 2115/A6, part of final plot No. 848 and which is situated within limits of Shrirampur Municipality. It is contended that the entire property was in possession of father of plaintiff. It is contended that there was some litigation between father of plaintiff and original owner

Rajaram and in the said litigation, decision was given by the Courts in favour of father of plaintiff. It is the case of plaintiff that he knew defendant Suresh and he had friendly relations with Suresh. It is contended that when Rajaram expressed intention to sell the property, plaintiff requested the defendant to participate in the transaction. It is contended that for helping plaintiff, defendant purchased property from Rajaram, but he agreed to allow to keep the possession with plaintiff and for that plaintiff was to pay Rs. 250/- per month as a rent. It is contended that in view of these circumstances, even after the sale deed executed in favour of defendant by owner, plaintiff is in possession of the entire portion. It is contended that he has made some construction on the portion, but defendant is now trying to create obstruction to possession and so, the cause of action has taken place.

3. The defendant contested the matter by filing written statement. He denied the aforesaid contentions. He filed counter claim for possession of the aforesaid property.

4. Issues were framed on the basis of aforesaid pleadings. The suit of the appellant was dismissed and counter claim of defendant was decreed. This decision has become final.

4. In execution proceeding No. 14/2005 various applications were filed by present appellants to obstruct the handing over of the possession. It is their contention that there was litigation between Sitaram, appellant No. 2 and owner Rajaram and in that litigation, the Courts have held that Sitaram was in possession as tenant. It was contended that in view of this decision which has become final present respondent cannot take possession from them. They were not party to the suit which was filed against Dattatraya, father of appellant No. 1. Appellant No. 2 is grandfather of appellant No. 1.

5. Both the Courts below have considered the record of previous suit like R.C.S. No. 104/1980. That suit was in respect of only one Gunta portion and the boundaries of this portion were given in the suit. Thus, the decision was in favour of Sitaram only in respect of one Gunta portion. This circumstance is considered by the Courts below and it is held that possession of western one Gunta can be given, though the decree is for two Gunta portion. Thus, in one way the tenancy rights of Sitaram are protected by the Executing Court. By referring the aforesaid record, the Courts below have held that the portion of one Gunta can be separated from the property which was mentioned in the

previous suit R.C.S. No. 104/1980. The findings given by the Courts below are on questions of facts. It is clear that only to protract the handing over of the possession of one Gunta portion and to create complications, the objections were filed. This is clear misuse of process of law from the appellants. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/