

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

**Second Appeal No. 591 of 2014
With
Civil Application No.9751 of 2014**

Parmeshwar s/o Dnyanoba Adhav. .. **Appellant.**

Versus

Subhash s/o. Baburao Selukar. .. **Respondent.**

Shri. S.D. Ghayal, Advocate, for appellant.

Shri. B.S. Kudale, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 10th AUGUST 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.69/2006 which was pending in the Court of the Civil Judge Junior Division Majalgaon, District Beed and also against the judgment and decree of Regular Civil Appeal No.24/2009 which was pending in the Court of District Judge-1 Majalgaon. Heard both sides.

2) It is the case of the plaintiff, present respondent, that land Gat No.167 to the extent of 1 hectare 72 R situated at village Kharat Adgaon having boundaries as described in the plaint, belongs to him and he had purchased the property in the year 1997 from defendant for valuable consideration. It is contended that possession of the suit land was given to the plaintiff by defendant and defendant has no concern with the suit property since the date of execution of sale deed. It is contended that Mutation No.455 was sanctioned on the basis of sale deed and entry of the name of the plaintiff is made in the record of ownership and also his name was entered in the crop cultivation column since then. It is contended that on 10-3-2006 the defendant interfered into possession of the plaintiff by picking quarrel and giving threats and so the cause of action took place for the suit. Relief of perpetual injunction was claimed by the plaintiff.

3) Defendant contested the suit by filing written statement. He admitted that sale deed was executed in favour of the plaintiff. He contended that plaintiff is doing money lending business and defendant had taken some

loan from plaintiff and only by way of security, the document was executed in favour of the plaintiff. It is contended that it was, in fact, mortgage transaction but nominal sale deed was executed in favour of the plaintiff. It is contended that when he realised that plaintiff was trying to grab the property he made application to Tahsildar to see that his land is released from the money lender, plaintiff, false allegations are made against him about the transaction. He contended that even crime was registered under the Money Lending Act against the plaintiff.

4) On the basis of aforesaid pleadings issues were framed. Both the sides gave evidence. The trial Court held that there was sale deed executed in favour of the plaintiff and on the basis of the sale deed he got the possession and on the date of the suit also plaintiff was in possession. The trial Court considered the sale deed, execution of which is not disputed and the 7/12 extract produced at Exhibits 10, 12, 28 and 100.

5) Question of only possession was to be considered by the Courts as relief of injunction was claimed. Learned counsel for the appellant, original defendant submitted that when nature of transaction was disputed by defendant, it was necessary for the plaintiff to seek declaration in respect of his ownership. This proposition is not at all acceptable. Both the Courts below have held that plaintiff has been in possession of the suit property and the defendant has no right to obstruct the possession of the plaintiff over the suit property. The findings are the findings of fact and no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application stands disposed of.

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

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