

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

**9 SECOND APPEAL NO. 342 OF 2015
WITH
CA/8384/2015
IN
SA/342/2015**

SHAHAJI MANIK KAIKADI AND ORS.

VERSUS

SHIVHARI NAMDEO SALUNKE

.....

Mr. S.S.Choudhary, Advocate for Appellants.

Mr. S.N.Patne, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 1st AUGUST, 2016

ORDER :-

. The Appeal is filed to challenge the Judgment and decree of R.C.S. No. 80/2008 which was pending in the Court of the Civil Judge [Sr.Division], Lohara, District Osmanabad and also to challenge the Judgment and decree of R.C.A. No. 7/2010 which was pending in the Court of the District Judge – 1, Omerga, District Osmanabad. The Suit

filed for relief of perpetual injunction by the present respondent is decreed in his favour by the trial Court and the findings are confirmed by the first appellate Court. Heard both sides.

2. The Suit was filed in respect of agricultural land bearing G.No. 52/2/5 admeasuring 78 R. situated at village Karajgaon, Tahsil Lohara, District Osmanabad. It is the case of the plaintiff that he purchased the suit property under registered sale deed on 17/07/2001 from one Satish Namdeo Salunke and since then he has been in possession of the property. It is the case of the plaintiff that defendant Nos. 1 and 2 have no concern with the suit property and they are the owners of adjacent survey numbers viz. 55/2/6/7. It is contended that the defendants are causing obstruction in the possession of the plaintiff over the suit property and so the Suit was required to be filed.

3. Both the defendants contested the matter by filing joint Written Statement. They admitted that the plaintiff had purchased the suit property. They contended that entire S.No. 55 was owned by their forefathers as Inam property and some portion was sold by the successor of

original Inamdar illegally to one Sopan Namdeo in the year 1989 and then the property was entered in the name of Satish Salunke, vendor of the plaintiff. It is contended that the boundaries of the property purchased by the plaintiff were different in the first sale deed. It is their case that one road Karajgaon – Dhanuri divided the lands of the defendants and due to that 15 R. land of the defendants is adjacent to the land of the plaintiff and the plaintiff wants to encroach over it and grab this portion.

4. On the basis of the aforesaid pleadings, issues were framed. Both sides gave evidence. The trial Court held that the plaintiff is in possession of the suit property and in view of the nature of the dispute, there is cause of action to the Suit and the relief was given. The first appellate Court has confirmed the finding given by the trial Court.

5. Learned counsel for the appellants submitted that the first appellate Court has not formulated necessary points for deciding the appeal as per Order XLI Rule 31 and Section 99 of the Code of Civil Procedure and so the Judgment delivered by the first appellate Court can not sustain in law. He placed reliance on the cases reported as

(i) 2003 (4) Mh.L.J. - 853 [Janardan Nago Patil Vs. Ramanand Ramdas Mishra], (ii) 2006 (4) Mh.L.J. - 187 [G.Amalorpavam & Ors. Vs. R.C.Diocese of Madurai & Ors.] and (iii) 2005 (1) Mh.L.J. - 980 [Vatsalabai Wd/o Vishwanath Nakhate & Ors. Vs. Madhaorao Laxmanrao Thakare & Anr.] .

6. This Court has carefully gone through the Judgment delivered by the first appellate Court. It is true that first appellate Court considered the point “ whether it is necessary to interfere in the Judgment and decree of the trial Court ? ” Though the aforesaid point was framed, reasoning given by the first appellate Court show that the point of possession of plaintiff, the point of cause of action against the defendants and entitlement of the plaintiff to get the relief are discussed in the reasonings.

7. The Courts below considered the contention of the defendants that they have the grievance that though the property was Inam, one of the successors of the plaintiff Inamdar transferred the suit property to third party without taking permission of the Collector. This contention shows that there is dispute between plaintiff and defendants. The

Courts below considered the oral evidence. The plaintiff has not disputed that towards his land, beyond the aforesaid road, there is property of defendants. The evidence on record is appreciated by the Courts below and it is held that the plaintiff wants to protect his possession. This relief can not give protection to the plaintiff if he has made encroachment and the defendants will be entitled to take proper steps, if plaintiff has really made encroachment. In view of the aforesaid facts, there was no option before the Courts below than to give the decree as prayed for. No substantial question of law as such is involved in the present matter. The aforesaid citations are of no help to the appellants as necessary points are discussed though separate points were not formulated.

8. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 8384 of 2015 stands disposed of.

[T.V.NALAWADE, J.]