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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.447 OF 2014
WITH
CIVIL APPLICATION NO. 7258 OF 2014

Siddi Ishaq Desai s/o Siddi Nawab

APPELLANT

VERSUS

Laxman Mogalaji (Died) LRs & others

RESPONDENTS

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Mr. C. R. Deshpande, Advocate for the appellant
Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, for R-1 to 4
Mr. D. R. Korde, AGP for respondent State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th JANUARY, 2016

ORDER :

1. Heard learned advocate Mr. C. R. Deshpande for the appellant, Mr. V. D. Hon, learned senior advocate for respondents No.1/1 to 1/8 and 2 to 4 and learned AGP for respondents State.
2. Regular Civil Suit No.48 of 2005 had been instituted by the plaintiffs-respondents No.1 to 4 seeking declaration of ownership of land shown in the map and for issuance of mandatory injunction to defendants No.1 to 4, who are government authorities to measure land of plaintiffs bearing gut No.903 admeasuring 95 Are. It is case of defendant No.5 in the written

statement that the suit was not tenable since suit was for declaration in respect of the act of public servants and act of public servants cannot be challenged in civil suit and as such, directions sought against defendants No.1 to 4 were not proper. The defendants on the whole requested for dismissal of the suit.

3. After the trial of the matter and upon hearing the parties, following operative order has been passed by the trial court on 30th September, 2008.

“Order

- 1. Suit of the plaintiffs is partly allowed.*
- 2. It is hereby declared that plaintiffs are owner and possessor of suit land G. No.903 situated at Degloor, to the extent of 4R land.*
- 3. Claim of the plaintiffs against defendant Nos. 1 to 4 for mandatory injunction is dismissed.*
- 4. Parties to bear their own costs.*
- 5. Decree be drawn accordingly.”*

4. Defendant No.5 purported to have been aggrieved by aforesaid deeming that order may operate against his interest, had been before appellate court in Regular Civil Appeal No.29 of 2009. The appellate court dismissed the appeal. The extract of the order of the appellate court, which would be relevant for deciding present second appeal reads thus -

*“It further appears that the defendant No.4 in collusion with defendant No.5 prepared false record against the order of Tahsildar and Deputy Collector. Here, no details of collusion are brought on record. Except the allegations about the collusion, there are no record. Except the allegations about the collusion, there are no allegations made against defendant No.5 by the plaintiffs. Even if we see the prayer clause, it is prayed by the plaintiffs that the mandatory injunction be granted against the defendant Nos.1 to 4. It is very material to note that there is no relief claimed by the plaintiffs against defendant No.5. Even there is no cause of action arose against the defendant No.5 to file the suit. Ultimately, the trial Court decreed the suit particularly in favour of plaintiff. The relief of mandatory injunction against defendant Nos.1 to 4 has been dismissed by the Court. **There is no order passed against the defendant No.5 - present appellant since there was no claim against him. Here, I must mentioned that in the entire judgment, no findings are given in respect of right if any of defendant No.5. It is true that in the final order, there is no specific order passed in respect of dismissal of the suit against defendant No.5, however when there is no specific mention about the relief granted, then there is a presumption that the suit is dismissed against a particular defendant and the Court shall be deemed to have rejected the relief against the defendant. So, in this case, certainly the suit has been dismissed against the defendant No.5, though there is no specific mention in the judgment and decree. So, in my view the judgment and decree passed by learned lower Court is just, legal and proper. It calls for no interference. With these observations, following order is passed.**”*

5. Perusal of aforesaid observations pointedly makes it clear that the suit shall be deemed to have been dismissed against

defendant No.5, though it has not been so specifically mentioned in the judgment and decree of the trial court. The appellate court, under the circumstances went on to dismiss the appeal.

6. In the face of aforesaid, it is submitted by learned advocate for the appellant that since there is no specific mention in the operative order of the decree passed by the trial court about dismissal of the suit against defendant No.5 - present appellant, it may cause hardship to defendant No.5. However, such a submission does not carry any water at all, and the order by the appellate court has been very explicit and clear on the same.

7. In the circumstances, no question of law can be said to have arisen for consideration in the second appeal and as such, no interference is called for in the present second appeal. Second appeal stands dismissed.

8. In view of dismissal of the second appeal, civil application No.7258 of 2014 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]