

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

APPEAL FROM ORDER NO. 56 OF 2015
WITH
CIVIL APPLICATION NO. 6597 OF 2015

Santosh s/o. Laxman Pachangre,
Age 32 years, Occu. Agri.,
R/o. Dahalegaon, Tq. Ghansawangi,
Dist. Jalna. **....Appellant.
(Ori. Plaintiff)**

Versus

1. Asaram s/o. Natha Pachangre,
Age 40 years, Occu. Agri.,
2. Dwarkabai w/o. Asaram Pachangre,
Age 38 years, Occu. Household,
Both R/o. Dahalegaon,
Tq. Ghansawangi, Dist. Jalna. **....Respondents.
(Ori. Defendants)**

Mr. R.M. Deshmukh, Advocate for appellant.

Mr. Swapnil A. Deshmukh, Advocate for respondents.

CORAM : T.V. NALAWADE, J.
DATED : 22nd February, 2016.

JUDGMENT :

1) Appeal is **admitted**. Notice after admission is made returnable forthwith. By consent, heard both the sides for final disposal.

2) The appeal is filed by original plaintiff against judgment and order of Regular Civil Appeal No. 147/2011, which

was pending in the Court of Ad-hoc District Judge-1, Jalna. The appellant had filed suit for relief of permanent injunction and decree of permanent injunction was given in his favour by Civil Judge, Junior Division, Ghansawangi in Regular Civil Suit No. 66/2010. This decision is set aside by the District Court in appeal filed by respondents/defendants and the matter is remanded back to the Trial Court with a direction to take measurement of the lands through Cadestral Surveyor and then decide the dispute.

3) The suit was filed in respect of 60 R. portion of land Gat No. 66 situated at village Dahalegaon, Tahsil Ghansawangi, District Jalna. Total area of this land is 7 Hectors 50 R. It is the case of plaintiff/appellant that 60 R. portion is purchased by him under registered sale deed dated 15.4.2002 from previous owner Bhagoji Pachangre for the consideration of Rs. 46,000/- and he got the possession on the date of sale deed. It is contended that mutation was made in his favour in the revenue record on the basis of sale deed and since the date of sale deed, he has been cultivating the portion purchased under the sale deed. It is the case of plaintiff that on 22.4.2010 when he was ploughing the land, defendants entered the land and picked up quarrel and tried to prevent him from cultivating this land and cause of

action took place for the suit. It is the case of plaintiff that defendants have no concern with aforesaid portion of the land, suit property and so, relief of permanent injunction needs to be given against them. Defendant No. 2 is the wife of defendant No. 1.

4) The defendants filed written statement and say. They contended that Bhagoji was not the owner of 60 R. portion from Gat No. 66 which is shown to be sold to plaintiff. They contended that notice of mutation, made on the basis of sale deed, was not given to them. They contended that they are cultivating 2 Acre 2 Gunta portion from land Gat No. 66 and there was no reason for them to obstruct possession of plaintiff in respect of any portion.

5) The defendants contended that Survey No. 36, admeasuring 22 Acre 31 Gunta was ancestral property of their predecessor in title. They contended that Survey No. 36 was subdivided during consolidation scheme into Gat Nos. 64, 65 and 66. They contended that after subdivision, Bhagoji, the vendor of plaintiff, got 85 R. portion in land Gat No. 66, but that portion was in two pieces, one situated on south side and one situated on north side. It is contended that north side piece was admeasuring 60 R. and south side piece was admeasuring 25 R.

of Bhagoji. It is contended by the defendants that by showing false boundaries in the sale deed executed in favour of plaintiff, the plaintiff is trying to grab the portion of defendants. They contended that they had no knowledge of sale deed though period of 10 year has passed since the date of sale deed. They contended that son of Bhagoji has sold 22 Gunta land to defendant No. 1 and that transaction was made after the death of Bhagoji.

6) Defendants have made other contentions and those are in respect of other co-sharers of land Gat No. 66. They have contended that the other owners like Balasaheb, Rambhau have created false revenue record to show that they are owners of more portion than the portion which was given to their share in the family partition. Defendants have given hand sketch map of the portions which had come to the share of successor of their common ancestor.

7) On the basis of aforesaid pleadings, issues were framed by the Trial Court and issues were in accordance with the requirement of proof, when suit is filed for relief of permanent injunction. Both the sides gave evidence. The Trial Court had given decree of permanent injunction on the basis of revenue

record, sale deed and contents of sale deeds made in favour of plaintiff and also by defendants. Witnesses of defendants gave some vital admissions during their cross examination and those admissions were also considered and used by the Trial Court.

8) The District Court has considered the dispute raised by the defendants that the owners of different portions have created some false revenue record and when less land was allotted to their share, more land is shown in their share. The District Court has considered the hand sketch map prepared by the defendants and in view of the contentions, the District Court presumed that Gat No. 66 must have been sub divided in to *Pot-Hissas* and that record needs to be considered. In view of nature of dispute raised in the written statement by the defendants, the District Court has observed that there is dispute over the title and the entire land needs to be measured to settle the dispute. When the other co-sharers were not party to the suit and they were also not examined by either party, the aforesaid dispute raised in written statement is considered by the District Court and a direction is given to take measurement through Taluka Inspector Land Records (T.I.L.R.). Admittedly, Gat No. 66 is not sub divided in revenue record and no *Pot-Hissas* are created. Only on the basis of factual possession, there are *Bands* between

the portions of different co-sharers. Thus, the matter could have been decided on the basis of oral evidence and the record available and that was precisely done by the Trial Court. But the District Court has considered the dispute raised by the defendants, which need not be considered when the suit was filed for relief of injunction. Observations are also made that plaintiff ought to have claimed declaration in respect of title, but at the time of remand, in operative order nothing of that sort is mentioned.

9) This Court has carefully gone through the pleadings of both the sides and the evidence given by the parties before the Trial Court. In written statement, at para No. 8, there is specific admission of defendants that Bhagoji, the vendor of plaintiff, had 85 R. portion land in Gat No. 66, though it is mentioned that this land was in two pieces. It is not disputed that Bhagoji had purchased this 85 R. portion of land from one Balu Punjaji under sale deed dated 1.1.1974. Copy of that sale deed is on the record as Exh. 33. In this document, there is no mention that 85 R. portion was in two pieces. The boundaries of 85 R. portion were mentioned in the sale deed of 1974. It is not disputed that under sale deed dated 15.4.2002, the same land is sold by Bhagoji in favour of plaintiff. The original sale deed is

produced on record at Exh. 39 and in this document also, the boundaries are mentioned. There is no mention that Bhagoji had two pieces of land and he was selling one piece. It is specifically mentioned that immediate to south of the portion sold to the plaintiff, there was remaining portion of Bhagoji. The Trial Court compared the boundaries given in these two sale deeds. It can be said that the boundaries given in the two sale deeds tally with each other for the purpose of the suit.

10) Defendant No. 1 has come with the case that he had sold some portion of his land from Gat No. 66 to one Gorakhnath in the year 2005. Copy of this sale deed shows that on the north of the property, sold by the defendant No.1, there was the property of Santosh, plaintiff. Some portion of defendant No. 1, which remained after the sale, was adjacent to the portion sold and it was on south side. The defendants have no explanation with regard to the description given in the sale deed of 2005 executed by the defendant No. 1. There is no mention that either the property of plaintiff or property of defendant No. 1 was in two pieces.

11) The 7/12 extracts of Gat No. 66 are on the record and they specifically shows that 60 R. portion is in possession of

plaintiff. The 7/12 extract for the year 1975-76 shows that Bhagoji, the vendor of plaintiff, was in possession of his separate portion.

12) Revenue map of the land Gat Nos. 63, 64, 65 and 66 is produced on the record at Exh. 58 and it shows that Gat No. 66 is not divided into *Pot-Hissas*. This document shows that the District Court had not taken care to see the relevant revenue record which was available for decision of the matter. Even when this document was on record, the District Court presumed that there was possibility that *Pot-Hissas* of Gat No. 66 were created as different owners were having separate shares in this property.

13) The oral evidence of plaintiff is consistent with his case and also the aforesaid record. The defendant No. 1 examined himself and in the cross examination, he has admitted that Bhagoji was having 85 R. portion in Gat No. 66 and out of that portion, 60 R. portion was sold to plaintiff by Bhagoji. The sale deed executed by him in favour of one Gorakhnath was also confronted to him and he admitted contents of that sale deed. In the cross examination, he has specifically admitted that since the year 1974, Bhagoji was in possession. He has given specific admission that from the year 2002, from the date of purchase of

60 R. portion, plaintiff has been in possession of said 60 R. portion. Witness Punjaram Dhakne examined by the defendants has admitted in cross examination that Bhagoji was having 85 R. portion in one piece though he again tried to say that it is in two pieces. He has also specifically admitted that the plaintiff is in possession of 60 R. portion purchased by him from Bhagoji. Witness Bhanudas examined by defendants has admitted in cross examination that to the north of the property of defendant, there is the property purchased by plaintiff. Witness Ramkishan examined by the defendants has admitted in cross examination that since the year 2002 from the date of sale, the plaintiff has been in possession of the portion purchased by him.

14) The aforesaid evidence given by the plaintiff and the admissions given by the defendants in the pleadings and in evidence are more than sufficient to prove the case of plaintiff of lawful possession over the suit property. The Trial Court had rightly given the relief of permanent injunction in favour of plaintiff, but the District Court has set aside the decision of the Trial Court and has remanded the matter back to the Trial Court for doing something like taking measurement which was not necessary.

15) The learned counsel for appellant placed reliance on some reported cases which are as follows :-

(i) 2001 (2) Mh.L.J. 786 [Santosh Hazari Vs. Purushottam Tiwari (deceased by L.Rs.),

(ii) AIR 2002 SUPREME COURT 771 [P. Purushottam Reddy and Anr. Vs. M/s. Pratap Steels Ltd.],

(iii) 2006 (6) ALL MR 310 [Khatunbi wd/o. Mohammad Sayeed & Ors. Vs. Smt. Aminabai wd/o. Mohammad Sabh],

(iv) 2008 ALL SCR 2460 [Thota Lakshmi Venkata Bala Vs. Muttamsetti Seethamma],

(v) 2011 ALL SCR 1337 [B.M. Narayana Gowda Vs. Shanthamma (D) (Deceased by L.Rs.) and Anr.],

(vi) 2013 (5) ALL MR 86 [Mr. Rui Jose D'Gama & Anr. Vs. Shri. Rama Pandurang Sawant & Anr.],

(vii) 2013 (7) ALL MR 505 [Ashok Magaswargiya Sah. Bhadekaru Malki Griha Nirman Sanstha Ltd. Beed Vs. Suresh Sahebrao Kamble & Anr.],

(viii) 2011 (2) Mh.L.J. 991 [Nalubai Narayan Shinde and Ors. Vs. Gopinath Dagdu Shinde],

(ix) 2011 (6) Mh.L.J. 334 [Syed Mushtaque Ahmad s/o. Syed Ismail and Ors. Vs. Syed Ashique Ali Khan s/o. Haidar Ali] and

(x) Copy of judgment in AO No. 113/2014 delivered by this Court (other Hon'ble Judge) dt. 9.4.2015 [Deelip s/o. Shivilal Jaiswal Vs. Yakub Khan s/o. Rubab Khan].

In aforesaid cases, the Apex Court and this Court have discussed the power of Appellate Court dealing with First Appeal. There

cannot be dispute over the propositions made by the Apex Court and this Court in the cases cited supra. The First Appellate Court is expected to consider the entire evidence and touch all the relevant points for decision of the appeal, though the First Appellate Court is not expected to lightly interfere in the findings given in respect of the oral evidence. This Court has no hesitation to hold that the First Appellate Court did not follow the procedure which was expected from it and instead of doing the exercise, which was required, some irrelevant submissions were considered and accepted by the First Appellate Court. In the evidence and in the pleadings, there is admission that plaintiff is in possession of the property and that possession refers the sale deed. So, there was no room for the District Court to interfere in the decision given by the Trial Court.

16) The learned counsel for respondent placed reliance on the case reported as **2008 (5) ALL MR 451 (S.C.) [Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By L.Rs. & Ors.]**. The Apex Court has discussed the circumstances, when the relief of declaration with regard to title needs to be claimed for getting relief of injunction. There cannot be dispute over the proposition made by the Apex Court in the case. In view of the facts of the present case, this Court has no hesitation to observe

that there was no necessity of claiming declaration of title for the plaintiff. In the result, following order is made.

ORDER

(I) Appeal is allowed. The judgment and order of the District Court is hereby set aside. Appeal filed in District Court is dismissed.

(II) Judgment and decree of the trial Court is hereby restored.

[T.V. NALAWADE, J.]

ssc/