IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 488 OF 2016

1. Bhagwan s/o Sampatrao Lipne
   Age : 43 Yrs., Occ. Agriculture,
   R/o : Nirwadi (Kh.), Tq. Sailu,
   Dist.: Parbhani.

2. Babasaheb s/o Bapurao Lipne
   Age : 48 Yrs., Occ. Agriculture,
   R/o : Nirwadi (Kh.), Tq. Sailu,
   Dist.: Parbhani.

3. Madhukar s/o Kishanrao Lipne
   Age : 48 Yrs., Occ. Agriculture,
   R/o : Nirwadi (Kh.), Tq. Sailu,
   Dist.: Parbhani.

4. Babasaheb s/o Vitthalrao Lipne
   Age : 49 Yrs., Occ. Agriculture,
   R/o : Nirwadi (Kh.), Tq. Sailu,
   Dist.: Parbhani.

5. Abasaheb s/o Vitthalrao Lipne
   Age : 43 Yrs., Occ. Agriculture,
   R/o : Nirwadi (Kh.), Tq. Sailu,
   Dist.: Parbhani.

6. Uddhav s/o Balabhau Lipne
Age : 43 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu,
Dist.: Parbhani.

7. Tukaram s/o Ashroba Lipne
Age : 58 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu,
Dist.: Parbhani.

8. Balasaheb s/o Ashroba Lipne
Age : 48 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu,
Dist.: Parbhani.

9. Dhondiba s/o Malhari Lipne
Age : 83 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu, **... APPELLANTS/**
Dist.: Parbhani. **[ORI. DEFENDANT]**

V E R S U S

1. Panditrao s/o Sukhdeo Lipne
Age : 59 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu,
Dist.: Parbhani.

2. Mahadeo s/o Panditrao Lipne
Age : 34 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu,

Dist.: Parbhani.

3. Apparao s/o Kishan rao Lipne
Age : 61 Yrs., Occ. Agriculture,
R/o : Nirwadi (Kh.), Tq. Sailu, ..**RESPONDENTS/**
Dist.: Parbhani. **[ORI. PLAINTIFFS]**

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Mr. S.R.Choukidar, Advocate for Appellants.
Mr. V.D.Salunke, Advocate for R – 1 & 2.

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CORAM : T.V.NALAWADE, J.
DATE OF JUDGMENT : 21/07/2016

JUDGMENT :

1. The Appeal is filed against the Judgment and decree of R.C.S. No. 154/2008 which was pending in the Court of the Civil Judge [Jr.Division], Sailu, district Parbhani and also against the Judgment and decree of R.C.A. No. 93/2013 which was pending in the Court of the Ad-hoc District Judge -1, Parbhani. Heard both sides.

2. The Suit was filed by the present respondents

for mandatory injunction for removal of encroachment made by the defendants on some portion of land G.No. 23 situated at village Nirwadi [Kh.], Tahsil Sailu, district Parbhani. The area of this land is 3 H. 30 R. and it is the case of the plaintiffs that by making some constructions,, defendants have made encroachment from southern side over the suit property. It is contended that in R.C.S. No. 152/1981, which was filed against defendant No. 10 and others, relief of injunction was given in favour of Dnyandeo Lipne and in the partition in the family of Dnyandeo Lipne, the property came to plaintiff No. 1. It is contended that the construction of temporary nature is made by the defendants and for that the material like fodder stacks and tin sheets are used. It is contended that on 16/10/2007 on the request made by the plaintiffs, revenue officer visited the spot and made panchanama of unauthorized structures. It is contended that the names of the defendants were then entered in the possession column of some portion of 7/12 extract and so cause of action took place. It is contended that there is collusion between revenue authorities and the defendants.

3. Defendant Nos. 1,3,4 to 10 filed Written

Statement and contested the matter. They only contended that the Suit is not tenable as the description as per the provision of Order VII Rule 3 of the Code of Civil Procedure is not given. They admitted the previous ownership of Dnyandeo over the suit property, but they contended that there is dispute over the area which the plaintiffs are claiming. They contended that their possession is long standing, of more than 40 years and they have become owners due to adverse possession.

4. On the basis of the aforesaid pleadings, issues were framed. Both Courts below have held that the plaintiffs are in possession over the remaining portion of land G.No. 23 and the defendants have made encroachment by making construction of temporary nature over the property of the plaintiffs. The Courts below have held that the defendants have failed to prove that they have become owners due to adverse possession.

5. In support of the case and the oral evidence of the plaintiffs, there is revenue record showing the title of the plaintiffs over the land G.No. 23. The defendants have no locus standi to challenge the ownership of the

plaintiffs, as they are not claiming ownership in any other manner than due to adverse possession. On the basis of the revenue record, the Courts below have held that on remaining portion, there is possession of plaintiffs. Except the words of the defendants, there is no record with them to show that they have been continuously in possession of the suit property for more than 12 years from prior to the date of the Suit. Their names were entered as encroachers after the inspection made by the revenue inspector in the year 2007. It can be said that the entry of the names was also unwarranted in view of the nature of possession and the purpose for which temporary construction was made. It can be said that their possession was at the most from 2005 or 2006. The Suit was filed in the year 2008. In view of these circumstances, it was not possible for the defendants to prove that they have become owners due to adverse possession.

6. So far as the point raised about description of the property is concerned, it can be said that as the defendants are not owners of adjacent property and by making the construction of temporary nature on the

property of the plaintiffs, they have made encroachment. There was no question of measurement of the encroachment. As the defendants have no right of any kind to keep the possession, there was no other alternative with the Courts below than to give the decree of mandatory injunction to remove the encroachment of temporary nature. No substantial question of law as such is involved in the matter. The dispute about the area of the portion owned by the plaintiffs, also need not be considered in view of the nature of the dispute.

7. In the result, Second Appeal stands dismissed. In view of dismissal of the Second Appeal, C.A. No. 10226 of 2016 stands disposed of.

[T.V.NALAWADE, J.]