

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

6 SECOND APPEAL NO. 476 OF 2016
WITH CA/9975/2016 IN SA/476/2016

DEVIDAS ALIAS DEVID GURBE GAIKWAD AND ANR
VERSUS
SMT. NARSABAI BABURAO KARADE

Shri. G.G. Deshpande, Advocate, for applicants.

CORAM: T.V. NALAWADE, J.

DATE : 19th JULY 2016

ORDER:

1) The appeal is filed by the original defendants of Regular Civil Suit No.254/2004 (Old No.237/2000) which was pending in the Court of the Civil Judge, Junior Division, Rahata, District Ahmednagar against the judgment and decree of the trial Court and also against the judgment and decree of Regular Civil Appeal No.16/2008 which was pending in the Court of District Judge-1, Kopargaon. The suit filed against present appellants for relief of perpetual injunction and for possession was decided against the appellants by trial Court and this decision is confirmed by the first appellate Court. Heard learned counsel for the appellants.

2) The suit was filed in respect of property No.1041 situated at Shirdi Nagar Panchayat and it is part and parcel of Survey No.3/3A. It is having size of 33 ft x 33 ft. It is the case of the plaintiff that the suit property is given to her by Tahsildar under allotment made under the scheme of the State Government to allot land to landless persons. The allotment was made on 1-10-1975. It is her case that she has made construction over the property. It is her case that the defendants are rowdy persons and they are trying to obstruct possession of the plaintiff over the suit property. So the suit was filed for relief of perpetual injunction. During pendency of the suit plaintiff contended that possession was taken forcibly by the defendants and so the other relief of possession was claimed.

3) Defendants, present appellants, contested the matter by filing written statement. They denied everything including title of the plaintiff over the suit property. They contended that since 1975 they are in possession of the suit property as licensees. It is contended that their names are also entered in the voters list showing that they were

living at this place. It is their case that the plaintiff was having property where she was running lodge and so no allotment could have been made by the State to her. It is contended that they made construction over the suit property by spending more than Rs.15000/-.

4) On the basis of aforesaid pleadings issues were framed. Both sides gave evidence. The trial Court gave decree of possession on the basis of oral evidence of the plaintiff and also the record of allotment made in favour of the plaintiff of the suit property. Record of assessment was also considered by the trial Court which is in favour of the plaintiff. The defendants, on the other hand tried to show that the plaintiff was not entitled to get such property from the Government under the said scheme as she was owner of other property.

5) The reasoning given by the Courts below show that it is not disputed that the suit property was allotted to the plaintiff. The defendants are contending that they are licensees but they are not specific as to who gave them licence. Even if it is presumed that the plaintiff had

permitted them to use the property, the plaintiff is entitled to get the possession as she has better title. It is up-to the proper authority to decide as to whether the allotment made in favour of the plaintiff was not proper and she was already having some property. These findings are confirmed by the first appellate Court. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil application is disposed of.

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

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