

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

28 SECOND APPEAL NO. 511 OF 2014
WITH CIVIL APPLICATION NO.8713/2014
IN SECOND APPEAL NO.511/2014

VESTA FOJYA PADVI DEAD, LRS BHOGYA VESTA PADVI
AND ANOTHER
VERSUS
PECHARYA MOYALA VASAVE AND OTHERS

...
Advocate for Appellants : Mr. Bhandari Anand P.
Advocate for Respondent No.1 : Mr.Pingale Durgesh
...

CORAM : T. V. NALAWADE, J

DATE : 18th April, 2016

ORDER:

1. The appeal is filed against judgment and decree of Spl. Civil Suit No. 21/2005 which was pending in the court of Civil Judge, Senior Division, Shahada and also against judgment and decree of Regular Civil Appeal No. 23/2008 which was pending in the court of District Judge-1, Shahada. The suit filed by the present respondent No.1 Pecharya Vasave for the relief of declaration and injunction is decided in his favour. Further the relief of removal of some construction made by present appellant on some part of the property is given. Both the sides are heard.

2. The suit was filed in respect of land Gat

No.180/01 admeasuring 3 H 17 R situated at village Kathi Ta. Akkalkuwa. It is the case of the plaintiff that the suit property is his ancestral property and after the death of his father, his name came to be mutated in the revenue record as owner and also as karta of joint family of successors of his father on 20.03.1978. It is the case of the plaintiff that the defendants have no concern whatsoever with the suit property. Defendant No.2 is son of defendant no.1 and defendant Nos. 3 and 4 are the brothers inter se. The other defendants, officers of the Government are made parties, as they had given some amount under the Gharkul scheme of the Government to defendant Nos.1 to 4 and by using that amount, some construction is made by defendant Nos. 1 to 4 on some portion of the land.

3. It is the case of the plaintiff that his family has been in possession of the land as owner but defendant Nos. 1 to 4 joined hands with Government officers, defendant No. 5 and some how got entered their names in possession column though it was a pencil entry, temporary entry. It is contended that after making of such entry, defendant Nos. 1 to 4 tried to take away crop from the field on 26.10.2005. On the

basis of this contention, the aforesaid reliefs were claimed.

4. Defendant Nos. 1 to 4 filed joint written statement and contested the matter. They denied everything including title of the plaintiff over the suit property. They contended that the previous No. of the suit property was survey No. 413/1 and the land has been in possession of defendant No.1 as a simple tenant since many years and his name was also entered as such in the year 1965. It is contended that defendant Nos. 1 and 2 are cultivating the land and by using the money given by the Government under Gharkul scheme, they made construction of house on some portion in 1997. It is contended that in one enquiry made by the Nayab Tahsildar for making entries of crop cultivation column in 1993, the plaintiff had admitted that the land belongs to defendant No.1. On the basis of this contention, prayer was made for dismissal of the suit.

5. Issues are framed on the basis of aforesaid pleadings. Both the sides gave evidence. Though there is oral evidence, there is revenue record of such nature which must be considered by the Civil Court.

This record shows that in Khata Extract-8 maintained by the Revenue Department, the plaintiff is shown as owner of land Gat No. 180/1. Copy of mutation sanctioned in favour of the plaintiff in the year 1978 shows that Survey No. 413/01 along-with other land were entered in the name of the plaintiff as Karta of a joint family after the death of his father Moyala. It appears that in the trial Court, at the fag end, certificate of purchase issued under sub section 9 of section 6 of the West Khandesh Mehwasssi Estates(Proprietary Rights Abolition, Etc.) Regulation, 1961 was issued by the authority on 01.01.1966 in favour of father of plaintiff. This certificate shows that Survey No. 413/1 and other properties were sold under the provisions of the aforesaid Regulation to the father of the plaintiff as he was protected tenant and the certificate was issued. 7/12 extract at Exh. 89 shows that on the date of the suit, name of plaintiff was there as owner but in crop cultivation column, name of defendant no.1 was entered to show that he had taken crops. Another document, mutation is produced which is of the year 1965 and it shows that the name of Moyala, father of the plaintiff, was deleted from the revenue record and the name of defendant No.1 was

entered as simple tenant. It was mentioned that name of Moyala was entered for Survey No. 413/01 due to oversight. On the last two documents, defendant no.1 is heavily relying. Defendant No.1 is relying on one more document like order made by Nayab Tahsildar on 27.01.1993 showing that defendant no.1 had applied to revenue authority to enter his name and due to that his name was entered in the year 1993 in crop cultivation column and he was also shown as simple tenant in the suit land. Learned counsel for the appellant submitted that during that enquiry, statement was given by the plaintiff that the land was with defendant no.1 and family of the plaintiff had no concern with this land.

6. The aforesaid last three documents cannot make much difference and these documents cannot change the fate of the matter. When, in the year 1966, the sale certificate was issued in favour of father of the plaintiff under aforesaid tenancy Regulation, it needs to be presumed that no value was given to the entry made in favour of defendant no.1 in the year 1965. Under the provisions of aforesaid tenancy Regulation, evidence of sale certificate is conclusive in nature. It can be said that from 1965 to 1993, there was no

name of defendant no.1 in the revenue record as owner or as a person cultivating land. But in the year 1993, he played a trick and got entered his name.

7. The submissions made for the appellant, defendant show that the appellant is also claiming to be a tenant of the same person against whom tenancy rights were claimed by the father of the plaintiff. It is not the case of defendant no.1 that the plaintiff or his father had given the land for cultivation to him. So called admission given before the revenue authority in the year 1993 by plaintiff was not called in civil court and it was not confronted to the plaintiff. In view of these circumstances, no importance can be given to the aforesaid last three documents on which defendant no.1 is placing reliance.

8. It appears that only due to the aforesaid mutation and entry made in the revenue record in the year 1993, the Government gave some money to defendant no.1 under Gharkul scheme for making construction. When, in the revenue record, the plaintiff was shown as the owner and that entry was made long back, it was necessary for the office of the Government to make proper enquiry before presuming that defendant no. 1

was entitled to make construction on this land. The land was given to the family of the plaintiff under tenancy Act and in view of this circumstance it was not possible to presume that defendant no.1 was simple tenant of previous owner and that he had any authority to make construction over the land belonging to the plaintiff.

9. In view of this record, this Court holds that there is no need to discuss the oral evidence. Both the courts below have not believed the witnesses examined by defendant No.1 in support his case. In the second appeal, it is not possible to interfere in such finding. Thus, the points involved are question of facts and no substantial question of law as such is involved in the matter.

10. The learned counsel for the appellant made submission that the issue ought to have been referred to tenancy court and such attempt was also made. He requested to remand the matter for referring the dispute to tenancy court. In view of the aforesaid record, this submission is also not acceptable. In the result, the appeal stands dismissed.

11. In view of the circumstances that the construction is made after taking benefit of the Government scheme, time is given to defendants to vacate that portion by the end of May, 2016.

12. Civil application is also disposed of.

(T. V. NALAWADE, J.)

JPC