

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

902 SECOND APPEAL NO. 276 OF 2016
WITH CA/11729/2013 IN SA/276/2016

JALALODDIN ABDUL KADAR KAZI DIED LRS JAKHIBEGUM AND
OTHERS
VERSUS
HARIBHAU SHANKARRAO DESHMUKH

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Advocate for Appellants : Pathan Tahiwarekhan Wajeedkhan
Advocate for Respondent : A.N. Sabnis

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CORAM : T.V. NALAWADE, J.
DATED : 4th May, 2016.

ORDER :

1. The appeal is filed by original defendants of Regular Civil Suit No. 172/1998, which was pending in the Court of Civil judge, Senior Division, Ahmedpur (Camp at Udgir). The suit was filed by present respondent Haribhau for relief of declaration of ownership and injunction. The suit was dismissed. But the decree claimed by him is given to him in Regular Civil Appeal No. 182/2011, which was pending in the Court of District Judge-1, Ahmedpur. Both the sides are heard.

2. It is the case of plaintiff that he has purchased the suit property, portion of 42 R. from Survey No. 32/2 and portion of 38 R. from Survey No. 34/3 from one Advocate Shri. K.S. Deshmukh to whom the property was sold by defendants. It is contended that from the date of sale deeds in the year 1980, the

plaintiff has been in possession as owner and the defendants are creating obstruction to his possession over the suit property.

3. Present appellants had filed written statement and they had contended that the sale deeds were executed by them in favour of Advocate Shri. Deshmukh and one Advocate Shri. Madane as contended by the plaintiff, but the sale deed executed in favour of Advocate Shri. Deshmukh was nominal sale deed and possession was not handed over. They contended that in the past, they had given possession to one Mohammad Kasim of entire area of Survey No. 34, admeasuring 4 Acres under lease deed and it was for the period of 30 years. It is contended that they got back the possession from said Mohammad Kasim in the year 1995 and so, they are in possession of the suit property.

4. The First Appellate Court has given the decree of only perpetual injunction in favour of plaintiff considering some obstacles in giving decree of declaration. The First Appellate Court has considered the record like original sale deeds executed in favour of Advocate Shri. Deshmukh, Advocate Shri. Madne, the evidence of these advocates and also the revenue record. As per the record, the father of defendants namely Abdul Kadar came in possession of Survey No. 34/B (34/2) in the year 1970-

71 and then he executed the sale deed in respect of that portion in favour of the two advocates. At that time, Kasim was in possession of only 2 Acre 27 Gunta of this survey number. Thus, Abdul Kadar was in position to hand over the possession of 1 acre 29 R. to aforesaid two advocates and they have given evidence that they had received possession of the suit property from the defendants and then they gave possession of the suit property to present plaintiff. There is revenue record in that regard. Thus, on the date of suit, there was sufficient material with the plaintiff to show that he was in possession. The record was consistent with the oral evidence given by the plaintiff. In view of this record, finding is given by the First Appellate Court that plaintiff was in possession of the suit property. It needs to be kept in mind that the sale deeds are not challenged and the suit was filed in the year 1998 when the sale deeds were executed in favour of Advocates in the year 1976. The finding is on question of fact. Nothing can be achieved by admitting the appeal and no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/