

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

6 SECOND APPEAL NO. 652 OF 2015
WITH CA/10434/2015 IN SA/652/2015

DEOJI VELJI GAVIT
VERSUS
BHAMTYA ISRYA GAVIT AND OTHERS

Shri. Sahebrao A. Nagarsoge, Advocate, for appellant.

Shri. S.P. Brahme, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 29 MARCH 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.21/2003 and also against the judgment and decree of Regular Civil Appeal No.12/2010. The suit is decided by the Civil Judge, Junior Division, Nawapur, District Nandurbar and the appeal is decided by the District Judge-1 Nandurbar. The suit of the respondents, Bhamtya Gavit and Damu Gavit, filed for declaration of ownership and recovery of possession is decided in their favour. Both the sides are heard.

2) The suit was filed in respect of land Gat No.3/2 (old Survey No.106) admeasuring 1 hectare 64 R situated at Devlipada, Tahsil Nawapur. It was the case of the plaintiffs that entire land Gat No.3 was allotted to Bhamtya and his brother Damu by the Collector and as these two brothers started cultivating the portions separately, two portions were given numbers as Gat Nos.3/1 and 3/2.

3) It is the case of the plaintiffs that on 15-6-2003 the defendants tried to disturb the possession of the plaintiffs over Gat No.3/2 admeasuring 1 hectare 64 R and complaint was given in respect of this incident against the defendants. It is contended that the defendants forcibly made encroachment over the portion of 2 acres 20 gunthas from Gat No.3/2 and they did sowing operations. It is contended that the defendants refused to return back the suit land and therefore the suit was required to be filed. It is the case of the plaintiffs that the defendants have no concern whatsoever with the suit property. Defendant Nos.1 and 2 are real brothers *inter se*.

4) The defendants filed joint written statement and contested the suit. They denied the allegations of encroachment made against them. They contended that the land has been with the defendants from their forefathers and their possession started in the year 1950-51. It is the case of the defendants that initially father of the plaintiffs was cultivating the land and then he gave permission to the defendants to cultivate the land and the defendants came in possession. It is contended that the defendants were giving crop share to the plaintiffs and so the case of encroachment is false.

5) On the basis of the aforesaid pleadings, issues were framed. Both the sides gave evidence. Both the Courts below have given finding that the defendants failed to prove that they were put in possession by the father of the plaintiffs and right is given to them to cultivate the land.

6) The revenue record shows that the suit land, entire Gat No.3, was allotted to the plaintiffs by the Government and accordingly entries of the names of the

plaintiffs were made in ownership and cultivation column from the year 1976 (Exhibits 57, 59 and 60). It appears that RTS proceedings were started by the defendants against the plaintiffs to challenge the mutation made in favour of the plaintiffs but the defendants could not succeed in the said proceeding. There were two mutations in favour of the plaintiffs but the order of allotment was not challenged by the defendants at any time. On the other hand, the defendants have no record to show that they were put in possession by the plaintiffs or their father and permission was given to the defendants to cultivate the land. When there was dispute of aforesaid nature, it does not look probable that due to consent of the plaintiffs, defendants had started cultivating the suit land.

7) To show the cause of action, evidence is given that on 15-6-2003 one incident took place and report was given by the plaintiffs to the police.

8) The plaintiffs produced the revenue record in support of their contentions and to show that they have

been paying the land revenue. As per the record they are shown as owners and the persons cultivating the land and this record has presumptive value. On the other hand, there is nothing with the defendants to substantiate the aforesaid case put up in their written statement. The findings given by the Courts below are the findings of the fact and they are concurrent findings. No substantial question of law as such is involved in the matter.

9) In the result, the appeal stands dismissed. Civil Application stands disposed of.

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

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