

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

1 SECOND APPEAL NO. 741 OF 2014
WITH CA/13217/2014 IN SA/741/2014

SYED ANWAR SYED ABBAS
VERSUS
SHARDABAI GANPATRAO KALE

...
Advocate for Appellant : Kasliwal Ajit D.
Advocate for Respondent : Jaiswal Rupesh A
...

CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Appeal No. 117/2011, which was pending in the District Court, Aurangabad. The appeal filed by present respondent, original plaintiff is allowed and Regular Civil Suit No. 1146/2004, which was filed for relief of permanent injunction, is decreed in her favour. Both the sides are heard.

2. The suit was filed in respect of 20 Gunta portion of land Gat No. 70 situated at Kanchanwadi, Tahsil and District Aurangabad. The total area of this land is 1 Acre 11 Gunta (51 R.) and according to the plaintiff, she has purchased the 20 R. portion described in plaint para No. 1 from its owner Jagannath Mote under registered sale deed dated 29.10.1986. It is her case

that on the date of sale deed, she was put in possession of the property and mutation was effected of her name in the revenue record. It is her case that defendant has no concern with this portion, but he is trying to make encroachment over the portion of plaintiff from one side which is purchased by him from the same vendor and so, cause of action has taken place for the suit.

3. Defendant, present appellant filed written statement. He contended that the entire area of land Gat No. 70 was in his possession from prior to 3.9.1986 and document like Batai Patra was executed in his favour by owner Raghunath Mote. It is contended that under the registered sale deed dated 9.11.1987, he purchased 31 R. portion of the land, but the remaining portion remained with him under the aforesaid Batai Patra as he was cultivating the land. It is contended that plaintiff did not get possession of the suit property from vendor Shri. Mote as defendant was in possession of land and so, relief of injunction cannot be given.

4. Issues were framed on the basis of aforesaid pleadings. The Trial Court had dismissed the suit by holding that there was Batai Patra in favour of defendant. The Trial court held that in view of the provisions of Indian Registration Act [Section

17 (1)(d)], registration of the document was not necessary and so, on the basis of that document, it can be presumed that defendant has been in possession of the suit property. One more circumstance was considered against the plaintiff that husband of plaintiff has given evidence and plaintiff has not stepped in to the witness box.

5. The First Appellate Court has considered the recitals of the sale deed executed in favour of defendant in the year 1987, and the revenue record. The First Appellate Court has held that on pre-ponderance of probability, the plaintiff has proved her possession over the suit property.

6. So called Batai Patra, which is not exhibited, was allegedly made prior to execution of sale deed in favour of defendant. But in the sale deed executed in favour of defendant, there is no mention of this document. The sale deed shows that defendant purchased 31 Gunta portion and in the sale deed, it was made clear that 20 R. portion was already sold to Sharada, plaintiff and she was shown on southern side of portion which was sold to defendant. The other recitals of the sale deed show that the possession of 31 Gunta shown to be sold to defendant was given on the date of sale deed i.e. 9.11.1987.

7. The revenue record shows that till the year 1994-95, the name of defendant was not entered even in crop cultivation column. First time, he filed application in the year 1994 to make the entry of his name and then due to the dispute, entries were not made. Under the provision of Maharashtra Land Revenue Code, crop inquiry is made every year and the names of the persons, who are not owners, but who are cultivating the land are entered in the revenue record. If defendant was really cultivating the land from prior to 3.9.1986, his name would have been entered in the crop cultivation column but that was not done. Further, he would have taken care to see that there is mention of Batai Patra and possession of the suit property of defendant in the sale deed executed in his favour. He did not take care to mention this circumstance and this circumstance itself is sufficient to infer that he was not in possession of the suit property.

8. The circumstance that the plaintiff examined her husband and she did not step in to witness box cannot make much difference in view of the aforesaid record. The Trial Court had committed grave error in not considering the aforesaid material which is against the defendant. 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/