

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, Court's orders or directions and Registrar's orders.	Notes, of Coram, Court's orders or Registrar's orders.	Office Court's or Judge's orders.
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SECOND APPEAL NO. 666 OF 2013

SHIVPRASAD PAPALAL JAISWAL AND ANR
VERSUS
SHAIKH MUKADDAR SHAIKH HAMID

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Advocate for Appellants : Mr. Sharma Vijay .
Advocate for Respondent: Mr. Lomte Arun S.

CORAM: T. V. NALAWADE, J.
DATED: 28th MARCH, 2016.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.10 of 2008 which was pending in the Court of Civil Judge, Junior Division, Aundha Nagnath, District Hingoli and also the judgment and order of Regular Civil Appeal No.25 of 2011 which was pending in the Court of District Judge No.1, Basmatnagar. The suit filed by present Respondent for relief of declaration and possession is partly decreed by the trial Court. Relief of possession is given though the relief of declaration is refused and this decision is confirmed by the first Appellate Court. Both sides are

heard.

2. The suit was filed in respect of house property which is given No.1636 in the Assessment record of village Panchayat, Jawala Bazzar, Tahsil Aundha Nagnath, District Hingoli. The size of the property is 20'x20'. It is the case of plaintiff, present Respondent that in the year 1990-91 the Government allotted this piece of land to the plaintiff on making payment of nominal price and the possession of the land was given on 3rd December, 1991. It is the case of plaintiff that this piece of land was given aforesaid number in the assessment record of village Panchayat. It is contended that the plaintiff had applied for permission for making construction over this piece of land and after getting construction permission he made the construction. It is contended that for some time he was residing there and he was running hotel. It is contended that in the month of November, 1997 when plaintiff was out of station, the defendant, present Appellant took possession and started running his own hotel there. It is contended that the plaintiff asked the defendant to hand over the possession but he refused to do so and so the cause of action took place. The suit was filed on 16th January, 1998.

3. Before the trial Court both the sides gave evidence. Plaintiff produced the original record like the allotment letter issued by Collector dated 3rd December, 1991 showing the size of the property and the place where the property is situated. Then, there is a record of assessment created by village Panchayat at Exhibit-49 and 50 which is consistent with the letter of allotment. Then, there is record of construction permission of village Panchayat. The tax receipts are also produced by the plaintiff to show that he had paid the tax for the year 1996-1997, 1997-98. Oral evidence is given by plaintiff which is consistent with the aforesaid contentions. It is not in dispute that new number is given to the aforesaid property like No.2196 in Assessment Record of village Panchayat with effect from 2001-02.

4. As against the aforesaid evidence, there is only oral evidence of defendants. Defendant Shivprasad has stated in evidence that the claim of the plaintiff is false. He has given evidence that he has been in possession for last more than 25 years and is running a grocery shop there. In the cross examination he admitted that the property where he is doing business is shown to be allotted to the plaintiff in the Government record and its

number was 1636 in the past and at present it is numbered as 2196. He examined one witness Jaiswal in support of this contention. There is no record to show that the property was owned by the predecessors of the defendant or it was allotted to the defendant by the Government.

5. Learned counsel for the appellant, defendant submitted that when the defence was taken that the aforesaid record was forged record, it was necessary for plaintiff to call the officer from concerned department, like Tahsildar and the Secretary of Village Panchayat for proving the aforesaid record. This submissions is not acceptable. The record is original, bearing stamp and seal of the offices and it was given exhibit by the trial Court. When it is a case of defendant that it is a forged record, it was necessary for defendant to call the witnesses to prove that no such allotment was made in favour of the plaintiff. Not even tax receipt is produced by defendant to show that he has paid tax to local body. Thus, there is aforesaid record showing that the disputed property was allotted to plaintiff, he made construction over it and he is owner of the structure. The suit was filed on the basis of title and there is nothing with the

defendant to show that he has better title. Only because there is condition imposed in the letter of allotment that plaintiff cannot transfer this land, the relief of declaration of ownership is not given. The findings of the courts below are concurrent and the finding has the base of the aforesaid record. No substantial question of law as such is involved in the matter.

6. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dt.28/03/2016.
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