

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

Second Appeal No. 369 of 2013

Laxman S/o. Shankar Rawate
And Others.

.. Appellants.

Versus

Sakharam S/o. Vithoba Langhe
And Others.

.. Respondents.

Shri. A.N. Nagargoje, Advocate, for appellants.

CORAM: T.V. NALAWADE, J.

DATE : 5th APRIL 2016

ORDER:

1) The appeal is filed by original defendant No.2 Laxman and others of Regular Civil Suit No.99/1989 which was pending in the Court of Civil Judge, Junior Division, Akole. The suit was filed for relief of injunction and the decree of injunction is given against the present appellants and others by the trial Court and the first appellate Court has confirmed the decision of the trial Court. However, the first appellate Court has observed

that by using the injunction decree the plaintiff will not be entitled to make encroachment over the land of the appellants, to take possession. Heard learned counsel for the appellants.

2) The suit was filed in respect of land Survey No.19/3-A admeasuring 42 R situated at village Gardani. It is the case of the plaintiff that this property is owned by the plaintiff and defendant Nos.8 to 10. It is contended that initially the property was standing in the name of ancestor of plaintiff like Sakharam Bhangare and he was survived by two sons and one daughter Hausabai. It is contended by the plaintiff that Hausabai died in the year 1970 and as successors of Hausabai, plaintiff and defendant Nos.9 and 10 have become owner of the suit property. It is contended that during lifetime, Hausabai was cultivating the land with the help of the plaintiff and defendant Nos.8 to 10 and after her death it is contended that some of the defendants tried to misuse the circumstance that in the past they had helped Hausabai in cultivating the land and so they are trying to make encroachment on the land. The defendants are adjacent

owners. It is contended that defendants Nos.1 to 8 have no concern with the suit property but they are trying to obstruct the possession of the plaintiff and defendant No.9 and 10 and so cause of action took place. Defendant Nos.9 and 10 filed purshis and admitted the claim of the plaintiff.

3) Defendant Nos.1,2,4,6 to 8 did not file written statement and "No WS" order was made against them. Defendant No.2 filed written statement and he contested the suit. He did not deny the title of the plaintiff over the aforesaid property but the defendant took stand that 42 R portion is not in possession of the plaintiff.

4) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence. It appears that through Surveyor measurement of the land of the plaintiff was done and his evidence was recorded. During measurement no encroachment was found to be made either by the plaintiff or by the defendants on the land of other. The plaintiff has not denied ownership of defendant No.2 over the adjacent land. It can be said that by

contending that plaintiff is not in possession of 42 R defendant has shown that there is cause of action for the suit.

5) Much was argued by the learned counsel for the appellant, defendant that during cross examination the plaintiff has admitted that he filed the suit for relief of injunction as he wanted to take back the encroached portion from defendants. The learned counsel for the appellant, defendant submitted that by misusing the decree of injunction the plaintiff may recover possession of some portion from the defendants. This Court holds that there is no such possibility. If plaintiff was in a position to use force or influence, he would not have approached the Court. Further when there is decree of injunction only, by using the decree of injunction, in execution proceeding the plaintiff cannot recover possession of the property, Survey No.19/3-A from any of the defendants.

6) In view of the aforesaid facts and circumstances of the present case this Court holds that

the findings of the Courts below are findings on facts and as they are concurrent, there is no possibility of interference in the decision of the Courts below. In the result the appeal stands dismissed.

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

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