

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

3 SECOND APPEAL NO. 234 OF 2016

SHANKAR KISHAN EKLARE (MEHATRE)
VERSUS
PARVATIBAI LACHIRAM TELI DIED LRS MINABAI SHIVRAJ
PARKANTHE

...
Advocate for Appellant : Kadam Gajanan G.
Advocate for Respondent : Bilolika Upendra B.
...

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

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 11/2004, which was pending in the Court of Civil Judge, Junior Division, Mukhed and also the judgment and decree of Regular Civil Appeal No. 27/2007, which was pending in the Court of District Judge-1, Kandhar, District Nanded. Both the sides are heard.

2. The suit was filed by present respondent for declaration of her ownership and for recovery of possession in respect of land Gat No. 450 (Old Survey No. 141/1), admeasuring 2 H. 7 R. situated at village Eklara. It is the case of plaintiff that defendant is her close relative and he is grandson of daughter of brother of husband of plaintiff. It is the case of plaintiff that she

has purchased the suit property under registered sale deed from previous owner Iranna and the possession was also handed over to her under the sale deed.

3. It is her case that due to close relationship, defendant is in possession of the property. It is her case that in the past, there was litigation between her and the mother of plaintiff by name Sangabai and in that suit, the issue of title was decided in her favour, but as the possession was not claimed, she did not get the possession. It is her case that after the decision of the matter, in the year 2003, she requested the defendant to return back the possession, but he refused to do so and so cause of action took place for the suit.

4. The defendant filed written statement and contested the matter. He contended that suit property was joint family property of his mother Sangabai and she had got the property in lieu of her maintenance. It is his case that the name of Sangabai was entered in revenue record and after her death, he has become owner of the suit property. Alternate defence was taken that he has become owner due to adverse possession.

5. It is not disputed that in the previous matter, issue of

ownership was decided and it was held that plaintiff is owner of the suit property. The matter was taken up to High Court by the other side. There was one more suit which was filed by Sangabai. She had contended that she was in possession. It was held that she was in possession of the property.

6. Though Sangabai was in possession, it was not her case that it was adverse possession. There is no record to show that property was transferred by present plaintiff. Admittedly, plaintiff had become owner under registered sale deed. In view of this circumstance, the only defence which was open to defendant was to prove that Sangabai had somehow got the ownership. There is virtually no record with the defendant to prove such case and further, there is decision in favour of plaintiff in that regard given in the previous suit which has become final. In view of these circumstances, there was no other alternative before the Courts below than to give the relief of possession in favour of plaintiff. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

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