

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

SECOND APPEAL NO. 39 OF 2016

Smt. Bibinanda w/o Dattu Giri & Ors. **APPELLANTS**

V E R S U S

Vijaykumar s/o Namdeorao Kale **RESPONDENT**

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Mr. S.P.Urgunde, Advocate for Appellants.

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CORAM : T.V.NALAWADE, J.

DATE : 3rd MAY, 2016

ORAL ORDER :-

1. The Appeal is filed against the Judgment and Decree of R.C.S. No. 38/2009 which was pending in the Court of the Civil Judge [Jr. Division], Renapur, district Lature and also against the Judgment and Decree of R.C.A. No. 315/2012 which was pending in the Court of the District Judge – 2, Latur. Heard learned counsel for the appellant.

2. The Suit was filed by respondent Vijay for relief of permanent injunction in respect of agricultural land admeasuring 49 R. from G.No. 135 situated at village Takalgaon. The defendants are close relatives of each other and they are successors of one Dattu Giri. It is the case of the plaintiff that he purchased the suit property from Dattu Giri under sale deed dated 30/08/2003 and since the date of sale

deed, he has been in possession of the suit property. The boundaries of those portion are given in the Suit on the basis of the description of the property given in the sale deed.

3. It is the case of the plaintiff that the defendants started obstructing the possession of the plaintiff over the suit property in the year 2009 and ultimately on 24/06/2009, plaintiff was required to give complaint against the defendant in the police station. It is contended that to prevent the interference in the possession, the relief of injunction needs to be given in favour of the plaintiff.

4. The defendants filed joint Written Statement and they denied everything. They however admitted the execution of sale deed by Dattu Giri. They contended that the suit property is Inam property and so sale deed could not have been executed by Dattu Giri in favour of plaintiff. They also contended that the property is in possession of defendants but it is barren land as plaintiff is preventing defendant No. 3 from cultivating the land.

5. On the basis of aforesaid pleadings issues were framed. Only the plaintiff gave the evidence. The Judgment delivered by the trial Court shows that sufficient opportunity was given to the defendants to lead evidence. Advocate of defendant had informed to the Court that he had written to the defendants to come to the Court, but after that neither the Advocate nor the defendants turned up to the Court. By Order dated 17/03/2011, the Court made order of closing of evidence of defendants and then decided the matter.

6. The plaintiff relied on the sale deed dated 30/08/2003 showing that on the date of the sale deed, possession was given to him. He examined 3 witnesses to prove the possession. He produced 7/12 extract showing that his name was mutated in the revenue record on the basis of the sale deed and his name was shown in the possession column also. Plaintiff was cross examined by the learned counsel for the defendant, but nothing could be brought on record to show that plaintiff is not in possession of the suit property. On the other hand, the evidence given by the witnesses of plaintiff show that some dispute is going-on when plaintiff is in possession and there is cause of action to the Suit.

7. The query was made by this Court to the learned counsel for the appellant and in response to the query, learned counsel informed that the substantive suit is filed by present appellant to challenge the aforesaid sale deed made in favour of the present respondent Vijay. It can be said that proper step could have been taken by the defendants, as Dattu Giri had executed sale deed in favour respondent Vijay. For granting the relief of injunction, the plaintiff was expected to show his possession over the suit property and on the basis of aforesaid record, trial Court has given the decree of injunction. The finding of the first appellate Court is concurrent and it can not be said that due to the aforesaid circumstances, first appellate Court did not think it proper to remand the matter for giving opportunity to the defendant to lead evidence. Nothing could have been achieved in view of the aforesaid record. Thus, no substantial question of law as

such is involved in the matter.

8. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 597 of 2016 does not survive and stand disposed of.

[T.V.NALAWADE, J.]

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