

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 505 OF 2014
WITH
CIVIL APPLICATION NO. 1338 OF 2014
IN
SECOND APPEAL NO. 505 OF 2014

Shri Kacharu Sopana Dherange & Ors. ... Appellants

Vs

Shri Gulab Namdev Dherange & Ors. ... Respondents

...

Mr. Sandesh Patil a/w Ms. Shakuntala Wadekar for the
appellants/applicants.

Mr. Vilas Tapkir for the respondents.

CORAM : N. M. Jamdar, J.

DATE : 25 APRIL, 2016

P.C. :

1 By this appeal the Appellants challenge the order passed by the District Judge, Pune allowing the Civil Appeal filed by the Respondents and declaring that the suit property is an ancestral property of the Appellants and Respondents and the Appellants should deliver vacant and peaceful possession of the suit properties to the Respondents. The suit was filed by the Respondents for possession of 27 Gunthas out of land S. 85/3 now Gut No. 383 of Village Koregaon Bhima, Tal. Shirur Dist. Pune.

2 The Respondent Nos. 1, 2 and 3 are sons of Namdev. Namdev had three brothers. The Namdev expired in the year 1992 and the suit property came to the share of the respondent Nos. 1 and

2. It was their case that original Gut No. 85/3 was admeasuring 1 acre 17 gunthas i.e. 57 R and when the Consolidation scheme was undertaken 58 Ares land was confirmed it was redesignated as Gut No. 383. According to the Respondents though Namdev had 28 guntha share in the said property, his name was not recorded and the entire gut No. was shown to have been allotted in the name of Sopana. Since Namdev was not literate, he did not take any objection. However, taking advantage of this entry in January 2010, the Respondents were dispossessed, and there the present suit was filed. The Appellants contested the suit contending that the property was allotted to the share of Sopana some time in the year 1940 during partition and Sopana was in possession of the property. After consolidation proceeding name of Sopana was confirmed as an owner for the 58 Ares. Jurisdiction of the civil court was also questioned by the Appellants. The learned Civil Judge dismissed the suit, thereafter appeal was filed by the Respondents which has been allowed by the impugned judgment.

3 The learned counsel for the Appellant firstly contended that the area of the land being 1 acre 17 guntha, what happened to the shares is something the Respondents must demonstrate. This submission cannot be accepted as there is no excess area. Survey No. 85/3 was 57 R which upon consolidation has become Gut No. 383 as 58 R. The learned District Judge has recorded a finding of

fact that there was a family partition in the year 1932. The factum of partition has not been questioned. If that was the position after partition and part of the property from survey No. 85/3 came to the share of the Respondent, the same situation ought to have continued after consolidation proceeding. The learned counsel for the Appellants has not been able to show, neither the Appellants were successful before the District Court, in demonstrating in what manner the entire property was shown in the name of the Sopana. The main contention raised by the learned counsel for the appellant is that the Civil Court did not have jurisdiction to entertain a suit questioning the consolidation proceedings. This argument was made before the District Court. The learned District Judge has considered the nature of the suit. The suit is filed by the Respondents for possession, upon their dispossession. It is in that context that the court has considered respective shares of the property. On the face of it merely by recording the name of Sopana in consolidation proceedings the share of Respondents in the property could not have been extinguished. The District Court has only recognized the fact that the Respondents have a share in the property which in no manner interferes with any consolidation scheme or that area of the land is altered. The contention raised by the learned counsel regarding jurisdiction of the civil court, therefore, cannot be accepted.

4 The learned counsel for the appellant then submitted

that in view of the entries in favour of the predecessor of Appellant from the order 1945 onwards which were not challenged, if not title, the possession of the property is proved and therefore there is no question of any dispossession. He relied upon the decision of the Apex Court in Narasamma & Ors. v. State of Karnataka & Ors¹ contend that the revenue record may not confer title but they can prove possession. The proposition of law as advanced cannot be disputed. However, it is not applicable in the present facts. The learned District Judge has noted the admitted position that parties are closely related to each other and in the 1930 and 1940 there was not much awareness and strictness about the revenue record amongst the rural families. It is only when dispossession took place that the Respondents have been aggrieved. Once it is held that the entire share of respondents could not have been extinguished, the resultant entries in the revenue record showing Gut No. 383/3 as entirely belonging to the Appellants lose significance. The Appellants could have produced other material to demonstrate their possession over the property, such as bills of sale of crops etc. Except these entries, whose correctness has already been questioned, the Appellants did not produce any evidence to show possession. In the circumstances the argument based on revenue entries cannot be accepted.

5 No other question of law urged and the questions which are sought to be raised have been answered as above.

¹(2009) 5 SCC 591

6 The Second Appeal involves no substantial question of
law and is dismissed.

7 Civil Application stand disposed of.

(N. M. Jamdar, J.)