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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.948 OF 2016
WITH
CIVIL APPLICATION NO.1970 OF 2016

Tukaram S. Bodke & Ors.	...Appellants
V/s.	
Government of India & Ors.	...Respondents

Mr.B.K. Barve with Ms.Archana Lad and Mr.Santosh Wagh i/b B.K. Barve & Co. for the Appellants.

Mr.S.R. Rajguru with Mr.Arun Kumar Roy for the Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 21ST DECEMBER, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908 the appellants (original plaintiff nos.1, 2, 4 and 5) have impugned the judgment and decree dated 21st September, 2016 passed by the learned Principal District Judge, Nashik, dismissing Civil Appeal No.30 of 2001, filed by the appellants. In the said appeal, the appellants have impugned the judgment and decree passed by the learned trial Judge dismissing Regular Civil Suit No.942 of 2000, filed by the appellants inter-alia praying for injunction against the respondent nos.1 and 2.

2. The appellants claimed to be in possession of the piece of land from old survey No.331 (new survey No.323) situated in Devlali cantonment, Mauje Bhagur admeasuring 15 acre 9 gunthas plus P.K. 2 acres 28 gunthas. The appellants claim to be in possession of various plots described in paragraph 1 of the plaint.

3. It was the case of the appellants that one Sudhir Dushing was the owner of the suit property. It was their case that they had purchased the suit property from the said Sudhir Dushing and got their names mutated in the record of cantonment board. It was the case of the appellants that they were in unobstructed long standing possession of the suit property, Adjacent to the suit property, there was a land of Dhaniram Rajput.

4. There is no dispute that the State Government had acquired large part of the suit land bearing survey No.323. The Government measurement conducted in the year 1997, possession of the Dhaniram Rajput and Sudhir Dushing was observed in respect of the suit land bearing survey No.323. The Government of India through the Estate Officer appointed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act issued a notice to show cause to the appellants. The said Dhaniram Rajput filed a suit (Regular Civil Suit No.179 of 1979).

5. Since the Estate Office issued a notice for demolition of

the suit structure, the appellants filed a suit for a declaration that the defendants had no right over the suit properties and for perpetual injunction not to demolish the construction carried out by the appellants on the suit property and not to interfere with possession of the appellants.

6. The suit was resisted by the Government of India as well as the Estate Officer on various grounds. It was the case of the respondent nos.1 and 2 that that the land bearing old survey No.331 was acquired by the Government for allotment of the same to the Military Department by notification dated 8th July, 1954 after following due process of law. It was the case of the respondent nos.1 and 2 that they were in possession of the suit land from 7th July, 1961. One Husenalli Ahmedalli, Smt.Sherbanubai Karmali and Smt.Khatiabai Karmali were the original owners of the suit land. It was the case of the respondent nos.1 and 2 that when the measurement in respect of the suit land was taken on 23rd December, 1998, the plaintiffs were found having carried out illegal and unauthorized encroachment on the suit land. The notice was issued on 8th April, 2000 upon the appellants by the respondent no.2.

7. The learned trial Judge framed five issues. Both the parties led oral as well as documentary evidence. Learned trial Court rendered findings of fact against the appellants and dismissed the

said suit filed by the appellants. Being aggrieved by the said judgment and decree passed by the learned trial Judge on 6th October, 2010, the appellants preferred an appeal (Civil Appeal No.30 of 2010) in the Court of the learned Principal District Judge, Nashik. The learned Principal District Judge, Nashik formulated three points for adjudication and passed a judgment and decree dated 21st September, 2016 dismissing Civil Appeal No.30 of 2010 filed by the appellants. The said judgment and decree dated 21st September, 2016 is impugned by the appellants in this second appeal filed under section 100 of the Code of Civil Procedure, 1908.

8. Learned counsel for the appellants invited my attention to the decree passed by the learned Joint Civil Judge, Senior Division, Nashik in Regular Civil Suit No.945 of 1996 filed by Smt.Sonubai Khemji Dushinge and Sudhir Sukhdev Dushinge, which suit was filed against the Union of India and School of Artillery. He submits that by the judgment and decree dated 5th July, 2000, the learned 2nd Joint Civil Judge, Senior Division, Nashik decreed the said suit for injunction filed by the predecessor in title of the appellants. The defendants to the said suit were restrained by perpetual injunction from causing obstruction to the physical possession of the plaintiffs thereto over the suit property Holding No.65 entered in the record of cantonment board, Deolali and adjacent open space about 3 gunthas

adjacent to survey No.331.

9. It is submitted by the learned counsel that the appellants have purchased the adjacent property described therein from Sudhir Dushing and another.

10. It is submitted by the learned counsel that the appellants are in established possession of the suit land and structures constructed thereon. He submits that the learned trial Judge as well as the first appellate Court have totally overlooked the decree passed by the learned trial Judge in the said suit filed by the predecessor in title of the appellants.

11. It is submitted that the findings rendered by the two Courts below are totally perverse and based on no evidence and thus such perverse findings can be interfered with by this Court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908.

12. Learned counsel for the appellants placed reliance on the order passed by this Court on 25th September, 2014 in Second Appeal No.706 of 1992 filed by Dhaniram Bhagwandas Rajput against the Union of India and others and submits that since the suit structure is not acquired by the respondent nos.1 and 2, the appellants cannot be dispossessed in respect of the suit structure.

13. Mr.Rajguru, learned counsel appearing for the respondent no.1 on the other hand placed reliance on the findings rendered by

the two Courts below and also the oral evidence of the appellants which were appreciated by the two Courts below. He submits that though the appellants had alleged before the learned trial Judge that the suit land was purchased by them from their predecessor in title, the appellants could not produce any documents in respect of such false case pleaded before the learned trial Judge. He submits that the appellants also alleged that there was 99 years lease granted in their favour by the predecessor in title but did not produce any documents before the learned trial Judge in support of the case of the alleged long term lease. He submits that acquisition in respect of the suit land was complete as far back as on 8th July, 1954 and the respondent no.1 was in possession of the suit land from 7th July, 1961. He submits that the suit land was acquired by following due process of law as far back as on 19th June, 1954. He submits that when the measurement of the suit land was taken, it would found that the appellants were in unauthorized and illegal possession of the suit land and carried out unauthorized construction. The notices were issued accordingly to the appellants to vacate the suit land.

14. It is submitted that the findings recorded by the two Courts below are concurrent and being not perverse, cannot be interfered with by this Court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908.

15. Insofar as the order passed by this Court on 25th September, 2014 in case of Dhaniram B. Rajput, relied upon by the learned counsel for the appellants is concerned, it is submitted that the concerned Estate Officer has already issued notice under section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act against the appellants. The remedy to challenge the said notice by the appellants would be some where else and not in this second appeal.

16. A perusal of the record indicates that the suit land was already acquired by the Government as far back as on 8th July, 1954 after following due process of law on 19th June, 1954. The respondent no.1 already claims to be in possession in respect of the suit land pursuant to the said acquisition proceedings.

17. Insofar as the alleged rights claimed by the appellants in respect of the suit land is concerned, a perusal of the record clearly indicates that the appellants had claimed ownership rights in respect of the suit land through Sudhir Dushing. A perusal of the decree passed by the second Joint Civil Judge, Nashik in Regular Civil Suit No.945 of 1996 indicates that the said *ex-parte* decree was passed in a suit for perpetual injunction in respect of the property Holding No.65 entered in the record of cantonment board, Deolali and adjacent open space about 3 gunthas adjacent to survey No.331. Insofar as

the suit property is concerned, the suit property was not the subject matter of the suit filed by Smt.Sonubai K. Dushinge and Sudhir K. Dushinge.

18. Be that as it may, a perusal of the record indicates that in support of the claim of ownership of the appellants claiming through the said Sudhir Dushinge, the appellants admittedly could not produce any title deed in respect of the suit land. Be that as it may, the said land was already acquired as far back as on 19th June, 1954 and the question of any title in favour of the appellants does not arise.

19. A perusal of the impugned judgment and decree passed by the first appellate Court indicates that the appellants could not produce any document in respect of the suit land proving that there was 99 years lease granted by the predecessor in title in favour of the appellants. Be that as it may, since the suit land was already acquired as far back as in the year 1954, the question of execution of any lease deed by Sudhir Dushinge in favour of the appellants did not arise. The said Sudhir Dushinge was not examined as a witness by the appellants.

20. Since the appellants failed to produce any documents in respect of their claim of ownership or as a lessee, both the Courts below have rightly dismissed the claim of ownership or lease propounded by the appellants before two Courts below. The findings

of fact rendered by the two Courts below are concurrent and not being perverse, cannot be interfered with by this Court in this second appeal under section 100 of the Code of Civil Procedure.

21. Insofar as reliance placed by the learned counsel for the appellants on the order passed on 25th September, 2015 in Second Appeal No.706 of 1992 filed by Dhaniram Bhagwandas Rajput is concerned, this Court has dismissed the second appeal filed by the said Dhaniram B. Rajput. This Court however, granted liberty to the said Dhaniram B. Rajput to apply to the concerned authorities for rehabilitation in accordance with law within a period of four weeks from the date of the said order and directed the concerned authorities not to evict the appellants for the period of one year.

22. In my view, if the appellants are entitled to any alternate accommodation in respect of the structures constructed on the suit land or any compensation, they would be at liberty to apply for the same. On that ground, I am not inclined to grant any injunction against the respondent nos.1 and 2 from evicting the appellants at this stage.

23. In my view, there is thus no merits in this second appeal. No substantial question of law arises. Second Appeal No.948 of 2016 is accordingly dismissed.

24. In view of dismissal of the second appeal, Civil Application

No.1970 of 2016 does not survive and is accordingly dismissed.

25. No order as to costs.

(R.D. DHANUKA, J.)