

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.249 OF 2014

Suman Devraojio Niwal and ors.

-vs-

Babi Ramesh More

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. D. Dangore, Advocate for appellants.

Shri P. S. Patil, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : APRIL 20, 2016

The defendants have challenged the decree passed by the trial Court in favour of the respondent holding her entitled for the relief of permanent injunction thereby restraining the appellants from not dispossessing her from the suit field.

The respondent claimed to be the daughter of one Namdeo Niwal who expired on 18/09/1982. By further claiming that she was the only legal heir of said Namdeo Niwal, she continued in possession of field Gat No.127. According to her, one Deorao who was her cousin brother was assisting her in the agricultural operations. However, she apprehended that she would be forcibly dispossessed by said Deorao and hence filed suit for perpetual injunction

seeking to protect her possession.

Deorao filed his written statement and denied that the plaintiff was the daughter of Namdeo Niwal. According to him, the plaintiff was the daughter of one Narayan Chavan and as she was not the legal heir of deceased Namdeo she had no right to the suit property. It was further pleaded that the defendant was in possession since the death of his uncle, Namdeo Niwal.

The trial Court on consideration of the evidence on record held the plaintiff to be the daughter of Namdeo. It further found that the possession of the plaintiff had been proved and that there was no source of title to the defendant. The appellate Court affirmed aforesaid findings and dismissed the appeal.

Shri A. D. Dangore, the learned counsel for the appellants submitted that the finding recorded by both the Courts that the plaintiff was the daughter of Namdeo is without any evidence. He further submitted that Deorao was in possession of the suit property after the death of Namdeo and this fact was clear from various mutation entries. He submitted that the effect of these revenue entries were not considered by both the Courts and therefore the decree passed in favour of the original plaintiff was contrary to law.

Shri P. S. Patil, the learned counsel for the respondent

supported the impugned judgment on the ground that the same was based on proper appreciation of evidence on record. The trial Court after considering the evidence on record in paragraph 17 of its judgment has recorded a finding that the original plaintiff was in fact the daughter of Namdeo. It has referred to the admission of Deorao with regard to the entries in the register pertaining to the birth of the original plaintiff at Exhibit-30. It has further referred to the other statements made in the deposition of Deorao. Considering the fact that the trial Court has recorded the finding that the plaintiff was the daughter of Namdeo Niwal after considering the entire evidence on record, the same cannot be held to be perverse.

In so far as the aspect of possession is concerned, though it was submitted by the learned counsel for the appellants that the averments made in the plaint were not supported by the deposition of the original plaintiff, the trial Court as well as the appellate Court had found that the original plaintiff being the legal heir of Namdeo was in possession of the suit field after 1982. It has been found that the revenue records continued in the name of Namdeo till the year 1996 as per Exhibit-52. The other revenue entries initially showing the name of Deorao were set aside in the proceedings initiated by the original plaintiff which

proceedings have attained finality. The document at Exhibit-72 pertains to the entries for the years 2008-2011 but the same is after filing of the civil suit on 10/08/2004.

From the aforesaid, it can be therefore said that both the Courts have considered the evidence on record and have held in favour of the original plaintiff. These findings are based on the evidence on record and a possible view of the matter has been taken. The second appeal therefore does not give rise to any substantial question of law. Hence the same is dismissed with no order as to costs.

JUDGE