

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 203 OF 2016

Asrabai Gorakhnath Dighe
Age : 70 years, Occu. Nil,
R/o : Wadala Bahiroba,
Tq. Newasa, Dist. Ahmednagar

.. Appellant
(Orig. Plaintiff)

VS.

1] Ravindra S/o Punjahari Narwade
Age : 41 years, Occu.: Doctor,

2] Sau. Apurna W/o Ravindra Narwade
Age : 36 years, Occu. Doctor,

Both R/o : Wadala Bahiroba,
Tq. Newasa, Dist. Ahmednagar

3] Appasaheb S/o Bhanudas Mote,
Age : 40 years, Occu.: Agri.,
R/o : Wadala Bahiroba,
Tq. Newasa, Dist. Ahmednagar

.. Respondents
(Orig. Defendants)

Mr. D.G. Nagode, Advocate for appellant
Mr. V.H. Dighe, Advocate h/f Mr. D.R. Kale, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 22-03-2017

ORAL JUDGMENT :

1. The second appeal takes exception to reversal of decree of injunction granted in favour of plaintiff by the appellate court.

2. Suit property bearing plot no. 47 city survey no.89

situated at village Wadala Bahiroba, Tq. Newasa, Dist. Ahmednagar had been granted to deceased Gorakhnath Dighe in 1970 by the state government under the document referred to as '*Kabulayat*'. Gorakhnath accordingly had been placed in possession of aforesaid property. He died in the year 1998.

3. Gorakhnath had executed registered sale deed of the aforesaid property in favour of Vilas Shende on 19-05-1980. Pursuant to the same, revenue record had taken entry of said transaction and, accordingly, property was being shown in the name of said Vilas Shende. Vilas Shende is stated to have carried out some construction over said property. Said Vilas Shende had later parted with aforesaid property in favour of Mr. Solaman Kamble on 25-03-1987 under registered sale deed. Since then, revenue record started bearing name of said Solaman Kamble. Subsequently, Solaman Kamble dealt with suit property under the registered sale deed dated 19-01-2000 in favour of respondents no. 1 and 2, namely, Mr. Ravindra Punjahari Narwade and Sau. Apurna W/o Ravindra Narwade. Thereafter, in December, 2001, present appellant instituted regular civil suit no. 531 of 2000 seeking permanent injunction against said Narwades.

4. The case of the plaintiff is, the grant of suit property by government to Gorakhnath Dighe – her husband, had been

inalienable without previous permission of the government. Yet, the property had been dealt with and, as such, transaction entered into by deceased Gorakhnath being illegal and void, no right or title accrues to the purchaser from him and thus the transactions are not legal and do not transfer title to them. It is claimed by plaintiff, she has been in continuous possession of the suit property since date of grant to deceased Gorakhnath. The property after grant, had been constructed over by her husband, as such, she continues to be in possession accordingly. The sale deeds executed had not disturbed her possession till 2001. Since disturbance to possession had been caused in 2001, the suit for injunction had been instituted.

5. The defendants present respondents no.1 and 2 denied all the averments and allegations. It is the case of the defendants that Gorakhnath was exclusive owner and possessor and title holder of suit property and had been within his right while he dealt with the property in favour of Vilas Shende in 1980. While suit land had been sold by Gorakhnath during his lifetime to Vilas Shende, the same had been open land. After purchase of suit land by Vilas Shende, he had carried on construction over the same and had been residing there till he had sold suit land to Solaman Kamble in 1987. Since 1987, it is Solaman Kamble, who had purchased property under registered sale deed, had been in possession of the property. Thereafter, said Solaman Kamble under registered sale deed had

parted with suit property in favour of the defendants no.1 and 2 – present respondents and, accordingly, the defendants are in possession.

6. Revenue record all along from time to time since 1980 onwards uninterruptedly is in favour of the purchasers. The plaintiff has not been in possession of the property at any time after the registered sale deed had been executed in favour of Vilas Shende on 19-05-1980. It is averred that the sale deed executed by Gorakhnath is binding on the plaintiff who is wife of Gorakhnath. She has no right to challenge the transactions and the suit is not maintainable.

7. The trial court framed points as to whether plaintiff proves to be in lawful possession of suit property; whether defendants have obstructed her possession; whether defendant no.1 proves to be purchaser and owner of suit property and as to whether the plaintiff is entitled for injunction.

8. The trial court considered that plaintiff has been in possession of suit property and there had been disturbance caused to her possession and that defendant no.1 could not prove to have become owner under sale deed and is in possession. The trial court considered that the material question that would arise, as to

whether Gorakhnath – husband of plaintiff had right to dispose of the property pursuant to conditions under document considered as *Kabulayat* at exhibit 42, since said document refers to that Maharashtra Land Revenue Code is applicable, and that as per the conditions in *Kabulayat*, Gorakhnath ought not use the property or permit it to be used other than for building and could not, without previous sanction of the collector, transfer the property to third person.

9. The trial court considered that *Kabulayat* does not confer exclusive right, title and interest in suit property to Gorakhnath and he had no power to dispose of suit property to third person. Since Gorakhnath was not absolute title holder, the purchasers from him and the subsequent purchasers did not get title to suit property.

10. Incidentally, the trial court had also referred to that defendants have relied on city survey extracts, gram panchayat house extracts and tax receipts to show their ownership. Documents exhibits 50 to 63 and exhibits – 76 to 102 depict that transactions having taken place between Gorakhnath and Vilas Shende, thereafter, Vilas Shende and Solaman Kamble and, thereafter, Solaman Kamble with present respondents and that none of the parties to these transactions had ever approached the collector seeking permission. It has also been referred to that

previous transaction holders were examined by the defendants.

11. Thereafter, the trial court went on to consider as to who is lawful possessor of suit property. While the plaintiff claims to be in lawful possession of the suit property, to support her case, she had adduced evidence through one Vishwanath Mote, who had in his deposition stated that plaintiff is in possession of the suit property. Thus, the trial court considered that though the defendants have filed on record city survey extracts, gram panchayat house extract and tax receipt, yet, the documents under which the defendants claim to be owners and in possession, were not valid. The defendants have no right to claim suit property. Accordingly, the suit was decreed.

12. In the appeal therefrom at the instance of the defendants, the appellate court had framed points for consideration, as to whether plaintiff proves to be in lawful possession and whether she is entitled to relief of perpetual injunction, whether defendants are entitled to proceed with appeal since it appears that defendants had parted with suit property during pendency of the appeal.

13. The appellate court has appreciated that, after the *Kabulayat* dated 04-11-1970 had been issued referring to restriction on transfer of property that it would be with previous sanction of the

Government, a *Sanad* came to be issued in 1985. The *Sanad* had removed said restriction and had declared that the interest in the property being alienable and has reproduced in judgment relevant extract from the *Sanad*. Appellate court has found that the transactions entered into thus far in respect of the property would not be liable to be faulted with.

14. Appellate court then went on to discuss evidence with regard to possession. The appellate court found that the transactions were duly proved by the defendants and that contemporaneous revenue and documentary record supports the case of the defendants about them being in possession and since 1980, Gorakhnath or for that matter, the plaintiff could not lay claim to possession.

15. Learned counsel for the appellant Mr. Nagode vehemently submits that while the trial court has properly considered that grant of property being inalienable without permission, the reversal of said finding by the appellate court, is not sustainable. He purports to contend that document of 1985 being relied upon, may not be relatable to suit property.

16. Learned counsel Mr. Nagode submits that while on evidence, the trial court has found the plaintiff to be in lawful

possession, she being wife of deceased Gorakhnath, and has further found that for the breach of the condition contained in *Kabulayat* of 1970, no title can ever flow to subsequent purchasers and thus the claim of their possession would not be legal. In the circumstances, reversal of findings with regard to possession for the considerations which have weighed with the appellate court, would be unsustainable.

17. Mr. Dighe, learned counsel appearing for the respondents has pointed out that both the documents, the one of 1970 and the other of 1985, have been produced by the plaintiff and that they relate to the very same property.

18. Learned counsel Mr. Dighe submits that in the suit *simplicitor* for injunction, what is relevant is the possession of the parties rather than any other consideration. Apart from aforesaid, he submits that it cannot be said that the respondents do not possess any title having regard to that subsequently in respect of very same property, alienations are allowed without permission. The alienations being permitted, the alienation of Gorakhnath in favour of Vilas Shende had become regular and subsequent alienations were not restricted at all. In the circumstances, it cannot be said that the defendants do not hold any legal title over suit property. He submits that there is sufficient evidence on record oral as well as

documentary showing defendants to be in possession. He submits that Vilas Shende, Solaman Kamble and the defendants have been concurrently and consistently in their depositions showing that the defendants are in possession. Correspondingly, there is documentary evidence showing defendants' possession and that they have been paying the land revenue accordingly.

19. Having heard learned counsel as aforesaid, the question that may fall for consideration in the matter is,

“ Whether the appellate court had committed any error, in reversing the findings given by the trial court with respect to possession of suit property and dismissing the suit for injunction by the plaintiff ? ”

20. It clearly emerges that in 1980, Gorakhnath had parted with suit property under registered sale deed in favour of Vilas Shende who had accordingly been put in possession. Revenue record had taken note of the same and mutation pursuant to the transaction had been carried out. Thereafter, Vilas Shende had carried on construction over suit property and had been residing there. He had parted with suit property alongwith construction in favour of Solaman Kamble in 1987 under a registered sale deed. Revenue record had been mutated accordingly.

21. Since 1980 to 1998, Gorakhnath had not objected at all to the transactions by Vilas Shende, Solaman Kamble nor had he claimed to be in possession. After death of Gorakhnath, it appears that even Solaman Kamble had parted with property under registered sale deed in favour of present respondents and present respondents were put in possession and revenue record accordingly came to be mutated. It is thereafter, the plaintiff purported to stake claim to be in possession of suit property. It further appears that save and except evidence of Vishwanath Mote, there is no other evidence supporting plaintiff's case about possession over suit property.

22. So far as legality of title to the property is concerned, in the matters of injunction, although it is being contended on behalf of the respective parties that they have led evidence, yet, what is germane for consideration, is possession of the property.

23. It emerges that there is indeed overwhelming evidence showing the defendants to be in possession of the suit property which is oral as well as documentary. While the plaintiff has not been in a position to adduce any documentary evidence to reinforce her contention about being in possession, Gorakhnath during his lifetime, had not challenged the transactions nor had at any time objected to changes in revenue record correspondingly taking place.

After death of Gorakhnath, the suit is filed, and, evidence by the plaintiff about her possession does not inspire any confidence.

24. In the circumstances, her entitlement to injunction has rendered very bleak and appears to have been properly adjudged by the appellate court and, as such, the second appeal does not deserve any further consideration and stands dismissed and the substantial question posed, stands answered accordingly.

25. Consequently, civil application no. 2930 of 2016 pending in this appeal, stands disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/