

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 428 OF 2015ALONG WITHCIVIL APPLICATION NO. 943 OF 2015

Baburao Yadav

... Appellant

Vs.

Laxman Sankhe and others

....Respondents

*Mr. Sachin Punde for the Appellant/Applicant.**Mr. V.A. Gangal, along with Mr. Anup Deshmukh, instructed by Mr. Ashok Gade, for the Respondents.***CORAM: S. J. KATHAWALLA, J.****DATE: 7th August, 2017****P.C.:**

1. The original Plaintiffs (Respondent Nos. 1 to 5 herein) filed 15 separate Suits on 5th December, 1992 against the Appellant herein (Original Defendant) and other individuals alleging that the original Plaintiffs (Respondent Nos. 1 to 5 herein) are tenants in respect of land admeasuring 1 hectare 46 ares of village Boisar in S. No. 61, Hissa No.1, Tal. Palghar, Dist. Thane (suit land); the Defendants in the year 1987 unlawfully encroached upon the suit land and

carried out unauthorised construction and has laid fencing around the structure. According to the original Plaintiffs, they carried out measurement of land through District Inspector of Land Records which revealed that amongst others the structure of the Defendant (Appellant herein) is in their land at S. No. 61, Hissa No.1. The Plaintiff, therefore, filed 15 Regular Civil Suits being Nos. 97 of 1992 to 111 of 1992 seeking identical relief against the Defendant (Appellant herein) and other individuals before the learned Civil Judge, Junior Division, Palghar at Palghar.

2. The Defendant resisted the suit by filing his written statement and contended that the Plaintiffs have no right to file the suit land as the land belonged to one Laxmibai Sahastrabudhe, who died in 1999 and the proceeds of the grass cultivated on it were taken by her brother Madhav K. Barve, who was also her Power of Attorney Holder. The Defendant also submitted that the Plaintiffs do not possess clear title and as agricultural tenants their powers are limited. Moreover, as the original owner was a widow the suit land cannot be transferred to the Plaintiffs. The Defendant also contended that the Plaintiffs are not cultivating the land and the agricultural tenancy cannot be applied in the present case. The Defendant denied all the averments in the plaint and prayed for dismissal of the suit.

3. The Learned Civil Judge, Junior Division, Palghar, after hearing all the parties, decreed the suit by his judgment and order dated 31st July, 2009 and directed the Defendants to hand over the suit property to the Plaintiffs.

4. The Appellant being aggrieved by the said judgment and order dated 31st July, 2009, preferred Civil Appeal No. 32 of 2011 before the Additional District Judge, Palghar, District Thane. The Learned Additional District Judge, Palghar, after hearing the parties, was pleased to pass his judgment and order dated 30th October, 2014 thereby dismissing the Appeal and confirming the decree for possession.

5. The Appellant has now filed the present Second Appeal impugning the concurrent finding of facts regarding the encroachment by the Judgments dated 31st July, 2009 and 30th October, 2014. Prior to the filing of the above Second Appeal, one of the Defendants in one of the identical 15 suits filed by the original Plaintiff had filed Second Appeal No. 421 of 2015 before this Court on ground identical to the one raised by the Appellant in the present case. This Court (Coram: N.M. Jamdar, J.) after dealing with the submissions raised in the Second Appeal held that in the circumstances mentioned in the order, the concurrent findings of fact regarding encroachment cannot be interfered with in the limited jurisdiction under Section 100 of the Code of Civil Procedure and dismissed the

Appeal as well as the Civil Application. On the same grounds the above Second Appeal as well as the Civil Application are hereby dismissed.

(S.J. KATHAWALLA, J.)