

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.183 OF 1995

Anant Bhagwan Raut, since deceased
through heirs & Ors.

...Appellants

vs.

Vidhyadhar Waman Raut & Anr.

...Respondents
(Orig. Defendants)

....

Mr. D.S. Sawant, for the Appellants.

Mr. S.M. Railkar, for Respondent Nos. 1 and 2.

.....

CORAM : S.C. GUPTE, J.

DATED : 2 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges the judgment and order passed by the Additional District Judge, Sindhudurg in Regular Civil Appeal No.68 of 1990. By this judgment and order, the learned District Judge allowed the appeal of the Respondents herein (original Defendants) against a judgment and decree passed by the Civil Judge, Junior Division, Malwan in favour of the Appellant herein (Original Plaintiff).

3. The Appellant's suit was for a perpetual injunction against the Respondents based on his title and possession. The suit property

consists of 20 lands, which were said to be owned by Bhadarkar, Kulkarni and Parab families and in possession of the Appellant's father, Bhagwan Babu Raut, in his capacity as a tenant. After the death of his father, the Appellant was in possession of, and cultivating, the same. These suit lands, save and except lands at Sr. Nos. 1, 3, 5, 6 and 20, came to be transferred to the name of the Plaintiff as a purchaser under the proceedings initiated under Bombay Tenancy and Agricultural Lands Act. So far as lands at Sr. Nos. 1, 3, 5, 6 and 20 are concerned, the Plaintiff claimed to be in possession of the same as a tenant on the tiller's day, having become a permanent tenant of the land on and from the tiller's day. The Plaintiff's case before the lower Court was that he was in exclusive possession of the suit lands and the Defendants were causing obstruction in his possession and, accordingly, had sued for the relief of perpetual injunction restraining the Defendants from causing obstruction to his possession over the suit lands. The Defendants claim to be members of the family of the Plaintiff. It is their case that the family, which consisted of the respective branches of four brothers, was in possession of various lands, including the suit lands, which were jointly cultivated by the family. It is the Defendants' case that the Plaintiff's father being the eldest amongst the brothers, the lands were recorded in his name as a tenant. It is claimed that, in the year 1940, different branches of the family started residing separately and cultivating the lands separately, though there was no partition between them. It is the Defendants' case that one of the family members, namely, Vasant Pandurang Raut, uncle of Defendant No.1, had instituted a suit before the Civil Judge, Junior Division, Kudal, being Regular Civil Suit No.50 of 1987, for general partition of joint family properties, to which the

Plaintiff and Defendant No.1 were parties.

4. On these facts, the question before the courts below was whether the Plaintiff proved his exclusive possession over the suit lands on the date of the institution of the suit and whether the Defendants were causing any obstruction to his possession. On the basis of the evidence led by the parties, the trial court came to the conclusion that the Plaintiff was in exclusive possession of the suit lands and that the Defendants were unauthorisedly causing obstruction to his possession. The first Appellate Court allowed the Defendants' appeal reversing these findings. The first Appellate Court held that on a preponderance of evidence before the Court, the Plaintiff could not be said to be in exclusive possession of the suit lands, which were in joint possession of the Defendants.

5. If one has regard to the evidence in the suit, the Plaintiff has relied on revenue documents, such as 7/12 Extracts and Form 8-A, in support of his case on title and possession. The Plaintiff also has relied upon land revenue/assessment receipts as well as money orders sent by the Plaintiff in the landlord of the suit land and receipts of khand issued by the landlord in favour of the Plaintiff. On the other hand, it emerges from the evidence that the Plaintiff and Defendants were close relations, forming part of a family. The family of their predecessor, one Babu, consisted of four brothers. One of the brothers, being the predecessor of the Plaintiff, whilst the other being the predecessor of the Defendants. There is evidence on record that the family was originally joint. There is no evidence of any partition amongst the members of the joint family. In

the year 1973 the Plaintiff himself had applied for a ration card in the names of all members of his family, including the Defendants. Then there are land assessment receipts showing land revenue being paid by the Defendants and their predecessors. These receipts pertain to the same khata as the suit land, namely, Khata No.68, though the khata itself stood in the name of the Plaintiff, and the land revenue is shown as having been paid on his behalf. There is also a mangar existing in the suit land, which is in the name of Defendant No.2, for which Defendant No.2 has been paying property tax to the local body. There is oral evidence not only of Defendant No.1, but also of DW3 and DW4, who are respectively the Sarpanch and the Police Patil of the village, that the Defendants were in possession of the mangar, which exists in the suit land, along with the surrounding land. On this rival evidence, the first Appellate Court found fault with the Trial Court's undue reliance on the revenue documents for determining the possession of the suit land and want of consideration of the Plaintiff's failure to aver in his plaint the existence of the mangar and possession of the same. The Court also found error in the adverse inference drawn by the Trial Court from the fact that the mangar was recorded in the file of Defendant No.2 only in the year 1990 in the face of the overwhelming evidence that the mangar existed much prior thereto and the Defendants were in possession thereof. The Appeal Court also found fault with the Trial Court not having taken into account the suit filed by one member of the family to which both the Plaintiff and Defendant No.1 were parties and which suit was pending before the Court. The first Appellate Court found these circumstances to be supporting the Defendants' contention that they were in joint possession of the suit lands and that the Plaintiff

was not in exclusive possession thereof. In the premises, the first Appellate Court set aside the judgment and decree passed by the Trial Court in favour of the Plaintiff and dismissed the suit.

6. The conclusion drawn by the first Appellate Court is certainly a possible conclusion based on evidence. It cannot be said to be based on no evidence or arrived by disregarding any relevant or germane material or taking into account any non-relevant or non-germane material. The conclusion drawn by the first Appellate Court cannot be said to be vitiated by any error of law.

7. Accordingly, there is no merit in the Second Appeal and the same is dismissed. No order as to costs.

(S.C. GUPTE, J.)