

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

SECOND APPEAL NO.216 OF 2017

Purshottam Kashinath Patil

... Appellant

-VS-

**State of Maharashtra,
Thr. Collector, Buldhana and anr.**

... Respondents.

Shri R. R. Vyas, Advocate for appellant.

Shri H. Dubey, Assistant Government Pleader for respondent No.1.

Shri N. B. Kalwaghe, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : September 05, 2017

P.C.

The appellant is the original plaintiff who has filed suit for perpetual injunction seeking to restrain the defendant from disturbing his possession and from evicting the plaintiff without following the due process of law. It is the case of the appellant that block No.22 and block No.83 were owned by his great grand-father. Said great grand-father had expressed his desire of donating the aforesaid land in favour of the respondent No.2-trust. Though such donation was made, the plaintiff took back possession in the year 1995 on the ground that the trust was not taking care of the

aforesaid property. Subsequently the Naib Tahsildar issued a notice to the plaintiff and demanded possession of the said land on behalf of the trust. Hence the above suit came to be filed.

In the written statement, it was pleaded that the plaintiff was a tress-passer. The suit properties were owned by the defendant pursuant to such donation by his great grand-father.

2. The trial Court decreed the suit and granted relief of perpetual injunction restraining the original defendant from causing obstruction to the plaintiff's possession. The appeal filed by the original defendant has been allowed and the suit has been dismissed.

3. Shri R. R. Vyas, learned counsel for the appellant submitted that only half of the suit property was intended to be donated by his great grand-father. The defendant however, had claimed the title of the entire property. It was submitted that the plaintiff was paying the taxes with regard to the entire land and he was also in possession inasmuch as the defendant did not take care of the aforesaid property. It was therefore submitted that the trial Court had rightly granted perpetual injunction in favour of the plaintiff but it was wrongly reversed by the appellate Court.

4. Shri N. B. Kalwaghe, learned counsel for respondent No.2-original defendant submitted that pursuant to the aforesaid donation, the properties were owned by the trust. He referred to the provisions of Pandharpur Temple Act, 1973 and submitted that by virtue thereof the defendant had become the owner of the said property. The aspect of donating the land was admitted by the great grand-father as per documents at Exhibits-67 and 68. The suit was erroneously decreed as provisions of the aforesaid Act was not brought to the notice of the trial Court.

Shri H. Dubey, learned Assistant Government Pleader appears for respondent No.1.

5. After hearing the respective counsel and after perusing the judgment of the appellate Court, I find that the appellate Court has rightly found that pursuant to the documents at Exhibits-67 and 68, the defendant had become the owner of the suit property. The plaintiff was sought to be evicted by issuing notice on 28/03/2001. Though this notice had been challenged by the plaintiff, the validity of said notice had been upheld. Infact the plaintiff was being evicted by following the due process of law. Hence there was no reason to grant any perpetual injunction in that regard.

6. Considering the entire documentary material on record, it is clear that the plaintiff had no legal right to seek the aforesaid declaration. The appeal therefore does not give rise to any substantial question of law. It is accordingly dismissed with no order as to costs.

JUDGE