

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

SECOND APPEAL NO.435 OF 2016

Dilip s/o Nivrutti Bhele

-vs-

Madneshwar Maharaj Sansthan, Thr. Managing Trustee Omprakash Gulabchand
Bhutada and ors.

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

Court's or Judge's Orders.

Shri S. K. Sable, Advocate for appellant.

Shri A. V. Bhide, Advocate for respondent Nos.1 to 5.

CORAM : A.S.CHANDURKAR, J.

DATE : September 19, 2017

The appellant is the original plaintiff who had filed suit for perpetual injunction seeking to restrain the respondents from disturbing his possession. A further declaration was sought that the plaintiff had become the owner of the suit property. The suit was partly decreed by the trial Court holding that the plaintiff was not liable to be vacated without following the due process of law. The appellate Court after finding that the plaintiff was not in possession when the suit was filed, dismissed the suit.

2. It is the case of the plaintiff that his father was in cultivating possession of the suit property prior to 1957. The property belonged to the defendant No.1-trust which was registered subsequently. On the basis of the plaintiff's settled possession, the aforesaid suit came to

be filed. According to the defendants the plaintiff's father was not a tenant of suit property and that the plaintiff was not in actual possession of the suit property when the suit was filed. Since the year 2008 the trust was in cultivating possession of the suit property.

3. Shri S. K. Sable, learned counsel for the appellant submitted that in view of various documents on record it was clear that the plaintiff was in possession being the legal heir of Nivrutti. He submitted that the trial Court rightly protected his possession while the appellate Court committed an error while dismissing the suit. He referred to various documents on record to indicate that the plaintiff was in possession when the suit was filed.

4. Shri A. V. Bhide, learned counsel for the respondents supported the impugned judgment. According to him since the year 2008, the possession was that of the trust. The plaintiff had no legal right to seek the relief of injunction.

5. I have heard the learned counsel for the parties and I have also perused the records of the case. As per the revenue records at Exhibits-40 and 41 it can be seen that the trust was in possession since the year 2008-09. The revenue entries in this regard have not been challenged by the plaintiff. In the tenancy proceedings, the Sub-Divisional Officer by order dated 25/05/1971-Exhibit-94 held that the plaintiff's father had no right to purchase

the suit field. Similarly, as per the order dated 04/05/2010-Exhibit-107, the Naib Tahsildar held that the defendants were in possession since the year 2008-09. The suit came to be filed on 18/02/2010. The appellate Court therefore rightly found that on the day when the suit was filed, the plaintiff was not in possession. The error committed by the trial Court has been rightly corrected by the appellate Court.

6. The finding with regard to plaintiff's possession is a finding of fact based on documentary evidence available on record. The said finding therefore does not give rise to any substantial question of law. The second appeal is thus dismissed with no order as to costs. The order of status-quo passed by this Court on 05/10/2016 shall continue to operate for a period of six weeks from today. It shall cease to operate automatically after said period.

JUDGE