

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

SECOND APPEAL NO.160 OF 2015

Hiralal s/o Tukaram Shahare

... Appellant

-vs-

Range Forest Officer, Gothangaon and ors.

... Respondent.

Shri S. R. Bhongade, Advocate for appellant.

Ms H. Prabhu, Assistant Government Pleader for respondent No.4.

CORAM : A.S.CHANDURKAR, J.

DATE : September 13, 2017

P.C.

This appeal is filed by the original plaintiff who is aggrieved by the judgment of the appellate Court allowing the appeal filed by the respondents and dismissing the suit filed by the appellant.

It is the case of the appellant that he is in possession of forest land bearing Gat No.153 admeasuring 2 H 20 R since the year 1976. According to him, his possession is continuous for almost forty years and as he belonged to the Scheduled Tribes, his possession over the forest land was protected. On that basis he filed suit for declaration that he had got ownership rights over the suit property and same should be held to be legal and valid. Prayer for permanent injunction was also made.

2. According to the respondents, the appellant had no right over the suit property. The rights, if any, were to be determined under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short, the said Act). Such rights had been determined and it was found that the appellant had no legal right over the said land.

3. The trial Court on the basis of document at Exhibit-62 found that the appellant was in possession and he was therefore entitled to continue therein unless he was dispossessed by following due process of law. It was further held that the declaration as sought could be obtained by approaching the Authorities under the said Act. It therefore partly decreed the suit. The appellate Court after taking into consideration the spot panchanama dated 02/11/2012 allowed the appeal and dismissed the suit.

4. Shri S. R. Bhongade, learned counsel for the appellant submitted that the appellate Court should not have taken into consideration additional evidence in the form of spot panchanama dated 02/11/2012. This additional evidence has been considered without following the procedure prescribed by provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. He submitted that the

trial Court rightly considered the relevant documents while granting a decree of permanent injunction. The appellate Court without considering the document at Exhibit-62 and by relying upon additional evidence dismissed the suit. He therefore submitted that the appellate court committed an error by doing so.

5. Smt H. Prabhu, learned Assistant Government Pleader for respondent No.4 supported the impugned judgment. It was submitted that the declaration as to ownership has to be obtained under provisions of the said Act. This has been rightly held by both the Courts. It was then submitted that even if the additional evidence that was considered by the appellate Court is excluded from consideration, there is other material on record to indicate that the appellant was not in possession. She referred to the documents at Exhibits-58 and 59 to indicate the fact that it was found on the basis of those documents that the appellant was not in possession. She therefore submitted that on the basis of evidence on record, the appellate Court rightly allowed the appeal. She placed reliance upon the decision in *Hero Vinoth (minor) vs. Seshammal AIR 2006 SC 2234*.

6. I have heard the learned counsel for the parties and I have perused the documents placed on record. In so far as the prayer for

declaration of title is concerned, it has been rightly held by both the Courts that the same would have to be adjudicated by availing the remedy prescribed under the said Act. In fact, during pendency of the proceedings the Sub-Divisional Committee was seized of the matter and on 15/02/2017 it disallowed the claim of the appellant. According to the appellant further remedy in that regard was being availed. Be that as it may, insofar as the prayer for permanent injunction is concerned, the trial Court on the basis of document at Exhibit-62 recorded a finding that the appellant was in possession prior to 31/12/2005. On that basis it granted a decree of permanent injunction. The appellate Court took into consideration the document at Exhibit-58 which was an order of Forest Right Committee and also document at Exhibit-59 which was a resolution of the Gram Panchayat. On the basis of these documents the appellate Court in paragraphs 8 and 10 of its judgment recorded a finding that the appellant was not in possession. These documents are subsequent to the document at Exhibit-62.

7. Even if the case of the appellant is accepted that the spot panchanama dated 02/11/2012 was not liable to be considered as it was not placed on record in the manner provided by provisions of Order XLI Rule 27 of the Code, even after excluding such evidence there is other evidence on record to support the conclusion of the

appellate Court. Even after disregarding this additional evidence, as per documents at Exhibits-58 and 59, the possession of the appellant is not established. Hence failure to consider earlier document at Exhibit-62 by the appellate Court is not of much relevance in this backdrop. In that view of the matter I do not find any case to interfere in the second appeal. Same is therefore dismissed. No order as to costs.

JUDGE