

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
BENCH AT AURANGABAD**

**SECOND APPEAL NO.209 OF 2015**

Rajaram s/o. Kisan Bamnawat,  
Age : 63 years, Occu : Agriculture,  
R/o. Hussainpur, Tal. & Dist. Aurangabad

**.. APPELLANT**  
(Orig. Defendant)

**VERSUS**

Vitthal s/o. Hiralal Bamnawat  
Age : 48 years, Occu : Agriculture,  
R/o. Hussainpur, Tal. & Dist. Aurangabad

**.. RESPONDENT**  
(Orig. Plaintiff)

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Shri A.M. Nagarkar, Advocate for the appellant.  
Shri P.F. Patni, Advocate for the Respondent

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**CORAM : P. R. BORA, J.**  
**DATE : JULY 02, 2018**

**ORAL JUDGMENT :**

1. The appellant has filed the present appeal against the Judgment and decree passed in Regular Civil Appeal No.256 of 2009 decided by Ad-hoc District Judge-1 at Aurangabad on 04.01.2013. The aforesaid Regular Civil Appeal was filed by the present respondent being aggrieved by the Judgment and decree passed in Regular Civil Suit No.687 of 2007 decided on 11.09.2009 by 8<sup>th</sup> Jt. Civil Judge, Junior Division at Aurangabad.

2. The present respondent had filed the aforesaid civil suit for possession of the suit property i.e. the agriculture land bearing Gut No.37 of village Hussainpur, Tal. & Dist. Aurangabad to the extent of 62 R. In the aforesaid suit, it was the contention of the respondent that, he was in possession of the suit property and the revenue record was also in his name. The respondent had earlier filed one Regular Civil Suit No.610 of 2001 against one Mahajan and the present appellant i.e. Rajaram seeking perpetual injunction against them. The said suit was decreed. For execution of the decree passed in the said civil suit, the respondent filed Regular Darkhast No.04 of 2006. It was the contention of the respondent that, during pendency of the said execution proceeding, the present appellant dispossessed him from the suit property. In the circumstances, the respondent filed the aforesaid Regular Civil Suit No.687 of 2007 claiming possession of the suit property from the present appellant. The suit so filed by the present respondent was dismissed vide the Judgment and decree passed on 11.09.2009. Dissatisfied with the Judgment and decree so passed, the respondent preferred Regular Civil Appeal No.256 of 2009 before the District Court at Aurangabad and the appeal filed by

him has been allowed vide the impugned Judgment. The First Appellate Court has held the respondent entitled for the possession of the said land and has directed the present appellant to handover the possession of the said property to the respondent within the period of three months. Aggrieved by, the original defendant has preferred the present second appeal.

3. Shri A.M. Nagarkar, the learned Counsel appearing for the appellant assailed the impugned Judgment on various grounds. The learned Counsel contended that, the trial Court had passed a well reasoned Judgment and had rightly dismissed the suit filed by the present respondent. The learned Counsel submitted that, without there being any perversity in the findings recorded by the trial Court, the First Appellate Court has unnecessarily indulged in reversing the finding of fact recorded by the said Court. The learned Counsel further submitted that, the First Appellate Court has failed in appreciating the evidence adduced in the suit and has drawn the unsustainable conclusions. The learned Counsel further submitted that, on the basis of the evidence adduced in the suit, the learned trial Court has recorded an unambiguous finding

that, the plaintiff has failed to show that, he was dispossessed from the suit property. The learned Counsel further submitted that, it was also observed by the learned trial Judge that, the boundaries of the suit property as were shown in the plaint and as were appearing in the sale deed at Exh.40 were not tallying with each other. In the circumstances, according to the learned Counsel, the trial Judge had rightly arrived at the finding that, the plaintiff had failed in proving that he was dispossessed from the suit property. The learned Counsel further submitted that, the First Appellate Court has grossly erred in allowing the plaintiff i.e. present respondent to correct the boundaries of the suit property in the appeal, which was impermissible.

4. According to the learned Counsel for the appellant, the substantial questions involved in the present second appeal are (i) 'Whether it was permissible for the First Appellate Court to interfere into the findings recorded by the trial Court without there being any perversity in the said findings and the ultimate decision recorded by the trial Court? and (ii) 'Whether the First Appellate Court could have permitted the original plaintiff to correct the boundaries of the suit property in the appeal?'.

5. Shri P.F. Patni, the learned Counsel appearing for the respondent supported the impugned Judgment and order. The learned Counsel submitted that, the trial Court had dismissed the suit only on the ground that, four boundaries given by the plaintiff in the plaint did not match with the boundaries given in the sale-deed. The learned Counsel submitted that, an amendment was carried out during pendency of the First Appeal with the permission of the Court and the mistake in mentioning correct boundaries was rectified by the plaintiff. The learned Counsel further submitted that, the First Appellate Court had passed a well reasoned order and no interference is required in the order so passed. He, therefore prayed for dismissal of the appeal.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the Judgments passed by the Courts below. It was the case of the present respondent before the trial Court that, he was dispossessed by the appellant from the suit property. The sale-deed pertaining to the suit property was

produced on record by the respondent – plaintiff at Exh.40. The appellant – defendant did not deny the contents of the sale deed at Exh.40. It is not in dispute that, some mistake had occurred in mentioning the boundaries of the suit property in the suit plaint. However, all other circumstances brought on record by the respondent – plaintiff were supporting his contention that, the appellant - defendant had dispossessed him from the suit property. On perusal of the Judgment passed by the trial Court, it is revealed that, mainly on the ground that the boundaries in the plaint and the sale-deed at Exh.40 did not match with each other, the trial Court recorded a finding that, the plaintiff failed in proving that he was dispossessed from the suit property.

7. It is the matter of record that, the respondent – plaintiff was permitted by the the First Appellate Court to correct the boundaries of the suit property and accordingly the necessary amendment was carried out. As has been observed by the First Appellate Court, nothing was shown by the appellant – defendant or anything contrary was brought on record by him to show that, the respondent – plaintiff was not in possession of the property within the corrected four boundaries. After the

amendment, the First Appellate Court had re-appreciated the entire evidence and thereafter has recorded the finding that, the plaintiff has successfully proved that, he was the owner of the land Gut No.37 of village Hussainpur, Tal. & Dist. Aurangabad to the extent of 62 R described in plaint para no.1.

8. Material on record reveals that, on the basis of Mutation Entry No.85 (Exh.31) the name of the respondent / plaintiff was recorded in the record of right on the basis of the sale deed at Exh.40. The 7/12 extracts, which were produced below list Exh.4 in the trial Court, and which were subsequently marked as Exhs.28 & 29 reveal that, the name of the respondent – plaintiff is appearing in the column of ownership of the 7/12 extract of the suit property to the extent of 62 R.

9. As has been observed by the First Appellate Court, in the cross-examination it was suggested to respondent - plaintiff that, his predecessor-in-title did not receive any property in the land Gut No.37, of course the said suggestion was explicitly denied by the respondent – plaintiff. The respondent – plaintiff had also examined Ramsingh Dagadu Bamnawat, who fully

corroborated his testimony. The respondent – plaintiff had also examined his predecessor-in-title, who is the real brother of the appellant – defendant and he also corroborated the version of the respondent – plaintiff in his evidence before the Court. Though both the aforesaid witnesses were at length cross-examined by the appellant – defendant, as has been observed by the First Appellate Court, nothing was elicited to disbelieve their testimonies.

10. As against the contention of the respondent – plaintiff, the appellant – defendant had raised a plea that, his brother Gangaram did not receive any share in the property and on that basis he had denied the title of the respondent – plaintiff to the suit land. It was also the contention of the appellant – defendant that, the plaintiff in collusion with his brother Gangaram has prepared false and fabricated document in respect of land Gut No.37. However, the appellant – defendant could not bring on record any evidence to substantiate the plea raised by him. It was also the contention of the appellant – defendant that, he was in possession of about 3 acres land in Gut No.37 and there was revenue record in that regard.

However, it is the matter of record that, the appellant – defendant could not produce any such revenue record either during course of the trial or during pendency of the first appeal. On the contrary, as observed by the First Appellate Court, the revenue record was fully supporting the contention of the respondent – plaintiff.

11. After having considered the aforesaid facts, the learned First Appellate Court recorded the finding that, the respondent – plaintiff was entitled for the possession of the suit property. Considering the evidence on record, I do not see any reason to cause interference in the finding so recorded by the First Appellate Court.

12. It was well within the jurisdiction of the First Appellate Court to allow the respondent – plaintiff to correct the boundaries of the suit property during course of the appeal. The appellant – defendant has failed in bringing on record any material to disbelieve the contention of the respondent – plaintiff that, he was in possession of the land within the boundaries as corrected in the memo of appeal and that he was

dispossessed from the said land. I, therefore, do not see any merit in the present second appeal filed by the appellant – defendant. In the result, the following order is passed.

ORDER

(i) The appeal is dismissed, however, without any order as to the costs.

(ii) In view of the decision rendered in Second Appeal, Civil Application No.530 of 2014 stands disposed of.

[ PR. BORA ]  
JUDGE