

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

SECOND APPEAL NO. 586 OF 2013

Mr.Jagannath Maruti Ghadge
(Deceased Through LRs)

1. Anusaya Jagannath Ghadge
and others.

.. Appellants

Vs

Suresh @ Shirish Pandurang
Babar and others

.. Respondents

Mr.S.S.Patwardhan and Ms.Sukhman Rait, for Appellants.

Mr.A.M.Kulkarni, for Respondent No.1 to 11, 13, 14/1 to 14/4, 15/1 to 15/5.

***Coram : N.M.Jamdar, J.
Date : 2 February 2018.***

Oral Order :

Heard learned counsel for the parties.

2. The Appellants-original Plaintiffs have challenged the orders passed by the Civil Judge, Junior Division Vita dated 20 August 2001 in Regular Civil Suit No.247 of 1985 and the judgment and order passed by the learned District Judge, Sangli dated 30 April 2013 in Regular Civil Appeal No.302 of 2001. Both the Courts have concurrently held that the Appellants are not entitled to relief of

injunction, after holding that the property claimed as tenant by the Appellants is different than what is described in the plaint.

3. The main document relied upon by the Appellants is a possession receipt dated 10 December 1982. According to the learned counsel for the Appellants, the grandfather of the Appellants was a tenant in respect of twenty two gunthas land and eight Ares land was handed over by the possession receipt and the Appellants continued to be tenants in respect of remaining land and therefore, both the Courts erred in not granting the order of injunction.

4. Both the Courts have assessed the evidence more particularly, the measurement maps and the report of the Court Commissioner to conclude that the property claimed by the Appellants is different than the suit land. The learned counsel for the Respondents has placed on record the possession receipt dated 10 December 1980.

5. In the possession receipt boundaries of twenty two gunthas i.e. large piece of land has been described. It is stated therein that on the northern side there is a City Survey No.450 and names of owners have been given on the eastern side and a hutment has been described. On the West, it is described that property of one Yashant Bhairu and Parashram Devkar is situated. The northern side boundary is also described. The careful perusal of the possession receipt indicates that, after these boundaries have been described for a large area, a portion of eight gunthas admeasuring 99 x 88 feet is

stated as handed over to the Appellants. Obviously the boundaries of the strip of land admeasuring 99 x 88 ft. cannot be the same as the twenty two gunthas. It appears that the Appellants relying on the measurements for a large piece of land and attributing it to the strip of land 99' x 88', had sought injunction and have attempted to injunct the Respondents who have purchased the land outside the strip of land.

6. The case of the Appellants that the Appellants were tenants of the entire area has rightly been disbelieved by both Courts as neither the Appellants made any grievance regarding handing over only eight Ares land nor challenged the sale deeds executed in favour of the Respondents in the year 1974. Both the Courts therefore, held that the Appellants failed to prove the case of tenancy in respect of land other than eight Ares.

7. Under these circumstances, no substantial question of law arises. The arguments advanced are relating to assessment of evidence. Second Appeal is dismissed.

(N.M.Jamdar, J.)