

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 698/2017

(SURYABHAN BHIKA DHOPATE & ANOTHER VERSUS TANEBAI KONDUJI CHIDE)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R. Bhishikar, counsel for the appellants.
Shri Rohit Joshi, counsel for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATE : AUGUST 28, 2018.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The appellants are the original defendants in the suit that has been filed by the respondent herein making a prayer for perpetual injunction so as to restrain the original defendants from disturbing their peaceful possession over the land admeasuring 4 Hectare 46 R of Survey No.61. It is the case of the plaintiffs that initially their father Gosai Dhangar was the owner of Field Survey No.38 and after his death, the said field was inherited by the plaintiffs who are his daughters. That field was admeasuring 4 Hectare 46 R. As the defendants tried to disturb the plaintiffs' possession, the aforesaid suit came to be filed. In the written statement, it was pleaded that the plaintiffs had no title in their favour. They were not in possession of the entire land and the possession of the plaintiffs to the extent of 8 acres on the Eastern side of the Northern portion of Survey No.61 was admitted.

The trial Court after considering the evidence on record dismissed the suit. The appellate Court considering the pleadings of the parties held that the plaintiffs were in possession of the area

admeasuring 8 acres and on that basis while allowing the appeal, decreed the suit partly to that extent. Being aggrieved, the defendants have filed the present appeal.

It is submitted by Shri N.R. Bhishikar, learned counsel for appellants that the plaintiffs having filed suit for perpetual injunction, they ought to have proved title to the suit property to indicate the basis for seeking injunction. He submitted that both the Courts have recorded a finding that the documents placed on record were not sufficient to establish the title of the plaintiffs. Despite that the suit has been partly decreed to the extent of 8 acres without specifying the location of that land in view of the fact that Survey No.61 was admeasuring 4 Hectare 46 R. It was thus submitted that the impugned judgment was liable to be set aside.

Shri Rohit Joshi, learned counsel for the respondent, supported the impugned judgment. According to him, in the light of the pleadings in the written statement, wherein the defendants have admitted the possession of the plaintiffs to the extent of 8 acres on the Eastern side of the Northern portion of Survey no.61, no interference with the impugned judgment was called for. In fact, the possession of the plaintiffs to that extent was never disputed. He further submitted that the defendant no.1 has filed a separate suit against the plaintiff no.1 herein for possession of the suit property. That suit has also been dismissed. It is thus submitted that the appeal does not give rise to any substantial question of law and hence, no interference is called for.

Heard the learned counsel and perused the pleadings of the parties and their evidence. It is not in dispute that Survey No.61 is shown to admeasure 4 Hectare 46 R. The plaintiffs had filed suit for perpetual injunction with regard to entire Survey No.61. In the written statement, in paragraph 4 it was admitted by

the defendants that the plaintiffs were in possession of land admeasuring 8 acres on the Eastern side of the Northern portion of Survey No.61. It is on this premise that the appellate Court has granted a decree of perpetual injunction limited to land admeasuring 8 acres. The apprehension expressed by the appellants that the location of the land to the extent of 8 acres has not been clarified in the judgment of the appellate Court can be taken care of by observing that said possession with regard to the Eastern side of the Northern portion of Survey No.61 is admitted by the defendants in paragraph 4 of the written statement.

The judgment of the appellate Court refusing to grant perpetual injunction with regard to remaining land is not under challenge. Separate suit with regard to recovery of possession has been filed by the defendant no.1 herein. The title can be adjudicated in those proceedings.

In view of aforesaid, it can not be said that the appellate Court committed any error in partly decreeing the suit to the extent of 8 acres of land from Survey No.61. By clarifying that this land admeasuring 8 acres would be from the Eastern side of the Northern portion of Survey No.61 as per averments in paragraph 4 of the written statement, the Second Appeal stands dismissed. No costs.

JUDGE

APTE

**Rohit
Dattatraya
Apte**

Digitally signed by
Rohit Dattatraya Apte
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