

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

SECOND APPEAL NO.802 OF 2016

Sayyad Ali s/o Syed Ahmed and others

... **Versus** ...

The State of Maharashtra and another

...

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for the appellants

Mr. Y.G. Gujrathi, AGP for the respondent No.1

Mr. A.S. Deshpande, Advocate for the respondent No.2 (Absent)

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th FEBRUARY, 2019

PRONOUNCED ON : 06th JUNE, 2019

ORDER :

1 Present appeal has been filed by original plaintiffs challenging the concurrent Judgment and Decree in R.C.S. No.253/2004 by Joint Civil Judge Senior Division, Jalna dated 19.08.2010, whereby their suit for declaration of ownership and perpetual injunction came to be decreed partly and the same was confirmed by learned Adhoc District Judge-2, Jalna in R.C.A. No.183/2010 dated 29.09.2015.

2 Present appellants-original plaintiffs had come with the case that

suit property viz. CTS Nos.7446, 7446/1 and 7546 situated at Ucharwata, Old Jalna, Tq. & Dist. Jalna were previously owned by one Bhagwant Murlidhar Deshmukh. He sold those properties to Sayyad Ahmed Sayyad Karim, who was the father of plaintiff Nos.1 to 5 by an unregistered sale deed for a consideration of Rs.50/- in the year 1327 Fasali. Thereafter, deceased Sayyad Ahmed had obtained permission for construction in the year 1964. Deputy Collector, Jalna had issued notice to deceased Sayyad Ahmed contending that he had made encroachment on the Government land to the extent of 3 acres and subsequently it was mentioned that it was 7 acres and directed him to remove himself from that area. Thereafter, plaintiffs had approached Maharashtra Revenue Tribunal, Aurangabad against the order of removal. The said matter was remanded and Deputy Collector was directed to conduct the fresh inquiry. However, yet no inquiry has been conducted. In the meantime, deceased Sayyad Ahmed had prepared layout plan of the eastern portion of the suit property. Defendant No.2 Municipal Council had forwarded it to the District Town Planning Officer, Aurangabad, who had sanctioned the layout in the year 1965 dividing the land into 23 plots. Out of those plots 10 plots have been sold by deceased Sayyad Ahmed by registered sale deed between 1965 to 1969. The purchasers have been put in possession of those plots. Sayyed Ahmed expired in the year 1972 and plaintiffs became owner of the suit properties. Plaintiff No.1 had prepared

layout plan of western side portion of suit land in 1982 which was sanctioned in the year 1988. However, thereafter when it was noticed that the City Survey office had shown CTS No.7446 as belonging to the Government, plaintiff No.1 filed appeal before Superintendent of Land Records and thereafter defendant No.1's name was removed. Thereafter, plaintiff Nos.2 to 5 had sold six plots from the layout of the western side portion. The surveyor of City Survey office filed a revision before District Deputy Director of Land Records, Aurangabad in the year 1991 against the said decision of the Special Superintendent of Land Records passed in the year 1980 in favour of the plaintiff. The said revision came to be allowed and the name of the plaintiff was removed from the CTS record in respect of that portion. Plaintiff had approached Additional Chief Secretary and Officer on Special Duty of Revenue and Forest Department, Government of Maharashtra in revision. That authority has rejected the revision application, thereby confirming the order passed by Deputy Director of Land Records. Therefore, plaintiff had approached this Court by filing Writ Petition No.374 of 1996 and it was dismissed on 16.10.2003. It is stated that after the decision of the writ petition, the defendant No.1 Government is trying to dispossess the plaintiffs. It is stated that the plaintiffs are in possession of the property since more than 80 years and their title is perfected. The layout is also sanctioned by the Town Planning Authority. It is also stated that in R.C.S. No.262/2000, the

title of the plaintiffs over suit property is under inquiry. However, plaintiffs were apprehending dispossession at the hands of defendant No.1, as the officials had visited the suit property on 12.04.2004 and asked the plaintiffs to vacate the same. Hence, the suit for declaration as well as permanent injunction was filed.

3 Defendant Nos.1 and 2 failed to file written statement and therefore, matter has proceeded without their written statement.

4 Plaintiffs have led oral as well as documentary evidence. The witnesses of the plaintiffs were never cross examined on behalf of the defendant Nos.1 and 2. After hearing the plaintiffs, the learned Trial Court has partly decreed the suit. The relief of declaration was rejected, however, it was found that the plaintiffs are in possession of the suit property and therefore, defendant No.1, the Government has been restrained from interfering and obstructing the possession of the plaintiffs over the suit property without following due procedure established by law.

5 Feeling aggrieved by the said Judgment and Decree, as aforesaid the present appellants-original plaintiffs approached District Court, Jalna by filing R.C.A. No.183/2010. After hearing both sides the appeal was dismissed. Hence, this Second Appeal.

6 Heard learned Advocate Mr. Shaikh Mujtaba Gulam Mustafa for the appellants and learned AGP Mr. Y.G. Gujrathi for the respondent No.1. Perused the record. It will not be out of place to mention here that taking into consideration the fact that only the plaintiffs have come before this Court challenging the concurrent Judgment and Decree to the extent which was not granted though prayed by them. The scope of the appeal is restricted to the relief of declaration which was sought by the plaintiffs.

7 The first and the foremost fact that is required to be considered is that the plaintiffs were claiming their right of ownership over the suit property by virtue of sale deed executed by said Bhagwant Murlidhar Deshmukh in favour of the father of the plaintiff Nos.1 to 5. It appears that the certified copy of the sale deeds at Exhs.89 to 98 have been produced on record, but they are those sale deeds which their father had sold and not the original sale deed between Bhagwant Deshmukh and deceased Sayyed Ahmed. If they wanted to prove that the origin of their ownership right was that sale deed, then the said sale deed ought to have been produced on record. Another fact, that is required to be considered is that in earlier round of litigation, which came up to this Court by way of Writ Petition No.374 of 1996, the plaintiffs have been held to be not the owners of CTS No.7446. It was stated to be belonging to the Government. Further, during the lifetime of

deceased Sayyed Ahmed itself the Deputy Collector, Jalna appears to have given notice contending that Sayyad Ahmed has made encroachment to the extent of 3 acres and later on corrected to 7 acres. No doubt, the Maharashtra Revenue Tribunal, Aurangabad had remanded the matter to Deputy Collector to conduct the inquiry and the said inquiry is not yet conducted. That does not give any advantage to the plaintiffs. Their title was definitely under cloud. Though the layout was sanctioned, that does not mean that the Government had accepted plaintiffs as the owners of the property. Every aspect as regards, whether the removal of the name of the plaintiffs from the City Survey record was legal or not, was considered by this Court in the writ petition, which came to be dismissed. Under such circumstance, there was nothing on record which could have allowed by both the Courts below to come to conclusion that the plaintiffs are the owners of the property. No doubt, the reason for which the Trial Court has mainly not considered the prayer of the plaintiffs was that the plaint was not properly valued. Even if we brush aside that point for a moment, yet independently also there was nothing on record to support the contention of the plaintiff.

8 Another fact, that is also required to be considered is that from the contents of the plaint, it can be seen that the plaintiffs were also claiming ownership over the suit property by way of adverse possession stating that

they are possessing the same as owner thereof since more than 80 years and their title has been perfected. The learned First Appellate Court has rightly held that declaration of title cannot be given on the basis of plea of adverse possession. It can be used as shield not as sword under the facts of this case. In order to base that claim in respect of adverse possession the plaintiffs will have to admit that defendant No.1 is the owner of the suit land. Further, as regards Government is concerned, the plea of adverse possession cannot be taken by merely stating that the plaintiffs are in possession for more than 80 years. When the title was challenged negatived in between, then it can be seen that though plaintiffs were held to be in possession, it was not on the basis of the ownership and in 2003 itself when writ petition was dismissed by this Court their plea of ownership had come to an end. Therefore, both the Courts have rightly not granted the declaration which was prayed by the plaintiffs. No substantial question of law is arising in this case. Hence, the Second Appeal is disposed of as “**not admitted**”.

(Smt. Vibha Kankanwadi, J.)