

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.924 OF 2005

1. Dhondiba s/o Nagu Jagtap,
Age 70 years, Occupation Agri.,
R/o Karchundi Tq. Beed.
Through His Mukhtyar Aam
Shri. Piraji s/o Dhondiba Jagtap,
Age 40 years, occupation Agri.,
R/o As above.
Deceased Through His L.Rs.
- 1-A. Sheshrao s/o Dhondiba Jagtap,
Age 55 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-B. Sukhakar s/o Shripati Jagtap,
Age 33 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-C. Jaiwanta s/o Dhondiba Jagtap,
Age 40 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-D. Mahpati s/o Dhondiba Jagtap,
Age 58 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-E. Ganpati s/o Dhondiba Jagtap,
Age 65 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-F. Baburao s/o Dhondiba Jagtap,
Age 52 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-G. Vaijnath s/o Dhondiba Jagtap,
Age 50 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.

- 1-H. Piraji s/o Dhondiba Jagtap,
Age 60 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
2. Dnyandeo s/o Nagp Jagtap,
Age 60 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
Deceased (Deleted).

....Appellants.

VERSUS

1. Maruti s/o Lahanu Shinde,
Age 60 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.

(L.Rs. Added a sper Order dtd.28-08-2013 in CA
No.8225 of 2010 in SA No.924 of 2005)

- 1-A. Laxman s/o Maruti Shinde,
Age 51 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-B. Ramkishan s/o Maruti Shinde,
Age 47 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-C. Sonaji s/o Maruti Shinde,
Age 41 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 1-D. Haribai Raosaheb Bhandwalkar,
Age 51 years, occupation Household,
R/o Devharachi Wadi Tq.Dist.Beed.
- 1-E. Indirabai Navnath Satpute,
Age 53 years, Occupation Household,
R/o Naigaon (Pathi) Tq.Dist.Beed.
- 1-F. Kalawatibai Bajirao Kavthekar,
Age 43 years, Occupation Household,
R/o Naigaon Pathi Tq.Dist.Beed.

- 1-G. Anjanabai Deelip Kolugade,
Age 42 years, Occupation Household,
R/o Daithana Tq. Ambad Dist.Jalna.
2. Kondiba Lahanu Shinde,
Age 58 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
3. Shrirang Bhujangrao Shinde,
Age 58 years, occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.

(As per Order dtd.17-11-2017 Legal Heirs of respondent No.3)

- 3-A. Babasaheb Shrirang Shinde,
Age 50 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
- 3-B. Janabai Bajirao Kolugade,
Age 55 years, Occupation Household,
R/o Karchundi Tq. and Dist.Beed.
- 3-C. Muktabai Prabhu Mulik,
Age 48 years, Occupation Household,
R/o Karchundi Tq. and Dist.Beed.
- 3-D. Chhagabai Sundarrao Makar,
Age 46 years, Occupation Household,
Suryachi Wadi Tq. Dist. Beed.
4. Subhadrabai Pandurang Satpute,
Age 35 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.
5. Nanibai Parasram Dhawale,
Age 50 years, Occupation Agri.,
R/o Karchundi Tq. and Dist.Beed.

..Respondents.

...
Mr. V. D. Sapkal, Advocate for Appellants.
Mr. R. A. Deshmukh, Advocate for Respondents
No.3A to 3D.
Mr. S. J. Salunke, Advocate for Respondents No.1A to 1G
Mr. R. G. Hange, Advocate for Respondents No.1A to 1G
...

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
15-03-2019.**

**Date of Pronouncing the Judgment:
26-04-2019.**

JUDGMENT :

1. Present appeal has been filed by the legal heirs of original plaintiff No.1. Plaintiff had filed Regular Civil Suit No.230 of 1982 before Civil Judge, Junior Division, Beed for declaration of ownership and permanent injunction.

2. The plaintiff along with original defendant No.2, who was later on deleted by order dated 22-08-1989, had come with a case that, they are the owners of portion of land Survey No.16/E/5 and Survey No.22/E/6 admeasuring 12 Acres 12 Gunthas and 10.06 Gunthas respectively situated at village Karchundi Tq. Dist. Beed. It is stated that, they are the joint owners and possessors of the suit land shown in the map appended to the land in Red colour. It was their

ancestral property. They are in actual possession and cultivation of the same since their forefathers. Their names have been recorded in the revenue record. Defendants No.1 and 2 are the real brothers *inter se*. They have no right, title and interest over the suit lands. However, in collusion with each other, they are interested in denying the ownership of the plaintiffs as well as disturbing the possession of the plaintiffs over the suit land. By way of amendment, defendant No.3 was added to the suit and it was pleaded that, defendant No.3 has no right, title or interest over the suit land. He ascertained his title and possession over the suit land on 22-07-1988, and therefore, cause of action arose against him also. Plaintiffs therefore prayed for declaration and perpetual injunction.

3. Defendants No.1 and 2 have filed written statement at Exhibit 23; whereas defendant No.3 has filed written statement at Exhibit 80. They all have denied the contents of the plaint. It has been stated that the description of the suit property is wrong. Plaintiffs are not in possession of the suit land as shown in the map appended to the plaint. It is stated that, the names of the plaintiffs are entered in the 7/12 extract but they are not in actual possession. It is stated that, plaintiffs are in possession to the extent of 1/4th share

in both the suit properties. One Harinarayan was the original owner of Survey No.16 and 22. After his death, his two sons Bhujanga and Lahanu became owners. Bhujanga was survived by his sons Shrirang and Hari. Lahanu had two sons, they are defendants No.1 and 2. It is stated that, Bhujanga had given 1/4th share from both the survey numbers to one Babaji Kengre. After death of Babaji Kengre, the said share was given to the father of the plaintiffs for cultivation. It is stated that, plaintiff No.2 and his sons went to the land of the defendants which is in their possession and tried to take possession on 11-06-1982. It is stated that, defendants No.1 and 2 together have half share in Survey No.16 and 22, whereas defendant No.3 is having rest of the half share. On these grounds they prayed for dismissal of the suit.

4. Parties have led oral as well as documentary evidence. After hearing both sides and taking into consideration the evidence on record, the learned trial Court has held that, plaintiffs have failed to prove their ownership over the suit land, however they are in possession of the property to the extent that is shown in the map with Red colour, and therefore, it was held that the plaintiffs are entitled to get injunction as prayed.

5. Being aggrieved by the Judgment and decree, both the parties i.e. plaintiffs as well as defendants filed Regular Civil Appeal No.05 of 1993 and Regular Civil Appeal No.270 of 1992 respectively before District Court, Beed. Both the appeals were heard by learned District Judge, Beed. Both the appeals came to be dismissed on 27-11-2003. Hence, now the legal representatives of original plaintiff No.1 have filed present second appeal to the extent of the refusal of the decree by the learned trial Court as well as First Appellate Court. It will not be out of place to mention here that, original defendants have not filed any appeal challenging the Judgment and decree passed by the learned District Judge, Beed, therefore the scope of this appeal is very much limited.

6. The Second Appeal was admitted by order dated 28-04-2009 by this Court on following substantial question of law ;

“Whether the trial Court and the First Appellate Court committed error in refusing declaration of ownership to the plaintiffs even though long standing possession as owner is proved through revenue record ?”

7. Heard learned Advocate Mr. V. D. Sapkal for appellants and learned Advocate Mr. R. A. Deshmukh for respondent No.3A to 3D.

It has been vehemently submitted on behalf of the appellants that, the second appeal is restricted only to the prayer of rejection of declaration of ownership to the plaintiff, and therefore, the substantial question of law is also limited to that extent. Plaintiffs are claiming ownership over the suit properties stating that, it is ancestral property. Their names are entered in the revenue record since their predecessor. Under such circumstance the document of ownership could not have been expected by both the Courts below. There is admittedly longstanding possession of the plaintiffs over the suit land, and therefore in view of Section 110 of Evidence Act, it ought to have been considered by both the Courts that this is a fit case where the declaration should be granted. Since admittedly there is possession of the plaintiffs since long over the suit property, the burden was on the defendants to prove that plaintiffs are not the owners of the suit land. In fact it ought to have been held that, defendants have failed to discharge this burden. So also they have not proved their ownership over the suit land. The automatic finding ought to have been granted that the plaintiffs are the owners of the suit properties. In order to support his arguments, he relied on the decision in, *State of A.P. & Ors. Versus Star Bone Mill & Fertiliser Co.*, reported in *AIR 2013 (SC) (Supp) 921*, wherein it has been held

that,

“The principle enshrined in Section 110 of Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose that the provisions of Section 6 of Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code were enacted. All the aforesaid provisions have the same object. The said presumption is led under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim, possession follows title is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in case of waste land, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of plaintiff is not prima facie wrongful, and title of plaintiff is not proved. It certainly does not mean that, because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he

has continued possession of the suit property, while the other side claiming title, must make out a case of trespass / encroachment etc. Where the apparent title is with the plaintiff, it is incumbent upon defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favours his version. Even a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of the possession and / or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act."

8. Further reliance has been placed on *Abdul Latif and Ors. Versus Nagar Vikas Pranyas, Udaipur*, reported in *AIR 2006 Rajasthan 215*, wherein it has been also held that,

"A document on record proved long, peaceful and settled possession over the suit property. Defendant could not make out case of trespass over its land in that case. The presumption of title on basis of possession could be drawn, on the basis of Section 110 of Evidence Act."

9. Per contra, the learned advocate appearing for the respondents No.3A to 3D supported the reasons given by both the Courts below, especially paragraph No.43 from the Judgment of the First Appellate Court wherein there is discussion in respect of Section

110 of the Evidence Act. It has been observed that, though the plaintiffs have shown various documents stating that they are in possession of the land since long, but the cultivation is not traceable to any definite title. It was said that, mere entires in Khasra Pahani Patrak as Kabjedar do not certify the source of title, and therefore the learned Courts below have rightly refused to draw the presumption under Section 110 of the Evidence Act by holding plaintiffs as owners of the suit lands.

10. As aforesaid the scope of the second appeal is very much limited. It is restricted to the relief which was not granted to the plaintiff in respect of ownership over the suit lands. Original defendants have not filed any second appeal challenging the Judgment and decree passed by the First Appellate Court after the dismissal of their Regular Civil Appeal No.270 of 1992. Under such circumstance in the light of the above said submissions, it is required to be seen as to whether both the Courts below have committed error or not. Both the Courts below have held that, plaintiffs are possessing the suit land since many years. Though the title was not traced but the oldest document was Exhibit 111 in respect of Survey No.16 which was Pahani Patrak for the year 1955-1956. Name of

Shrirang Bhujanga Shinde was shown as 'Pattedar' and name of plaintiffs' predecessor were shown as possessor. It was specifically mentioned in the same that the right, title or interest of Dhondiba Nagu and Dnyandeo Nagu are not traceable. Same is the case in respect of Pahani Patrak of Survey No.22 Exhibit 126. On the basis of these documents, the further entries have been recorded. Name of plaintiffs have been shown in the cultivation column and there are longstanding entries in the name of plaintiffs and predecessor. It is to be noted that, defendants have not produced any document of title. Only on the basis of entry as 'Pattedar' it appears that they were claiming ownership. In their written statement itself they had stated that, after death of Harinarayan Survey Nos.16 and 22 devolved on his two sons Bhujanga and Lahanu. Bhujanga had two sons by name Shrirang and Hari. Name of Shrirang can be traceable to said Khasra Pahani Patrak as 'Pattedar', but then it is stated that Bhujanga during his lifetime gave 1/4th share from both the survey numbers to one Babaji Kengre for cultivation and after death of Babaji Kengre, it was given to father of the plaintiffs for cultivation. Defendants are not coming with a case that, father of plaintiffs was inducted as tenant in respect of the said portion. Under such circumstance even the defendants are not explaining as to how

plaintiffs or their predecessor have got the possession of suit lands, if they want to claim ownership over the suit properties. Therefore, now the appellants are claiming that by taking advantage of the provisions under Section 110 of Evidence Act, both the Courts below ought to have declared plaintiffs as owner of the suit lands. The learned First Appellate Court took note of the provision but then observed that, though plaintiffs have shown various documents to support claim of cultivation of the suit lands. It is stated that, the cultivation is not traceable, that means it is not traceable to the title, but then at the same time it was stated that same is the case with the original defendants. Source of their ownership, title is also not traceable.

11. Defendants in this case have not come with a case that, plaintiffs are the trespassers, and therefore, definitely the ratio laid down in *State of A.P. & Ors. Versus Star Bone Mill & Fertiliser Co., (Supra)* would be applicable. In this case the Apex Court had taken note of the decisions of certain pronouncements in the past, they were ;

“10. In *Gurunath Manohar Pavaskar & Ors. V. Nagesh Siddappa Navalgund & Ors., AIR 2008 SC 901*, this Court held as under :--

.A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of Evidence Act..”

“11. In *Nair Service Society Ltd. V. K.C.Alexander & Ors. & Ors.*, AIR 1968 SC 1165, dealing with the provision of Section 110 of the Evidence Act, this Court held as under : –

.Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides..”

“12. In *Chief Conservator of Forests, Govt. of A.P. V. Collector & Ors.*, AIR 2003 SC 1805, this Court held that :

.Presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title..”

Based on these pronouncements the observation above stated (para 7) has been made.

12. The decision in *Abdul Latif and Ors. V. Nagar Vikas Pranyas, Udaipur (Supra)* case is also helpful to the appellants. When the

plaintiffs had shown their longstanding possession, defendants failed to prove the title as well as had not come with a case that plaintiffs are trespassers or encroachers; under such circumstance merely because name of one Shrirang was shown as 'Pattedar', will not confer a title in him. The maxim "possession follows title" ought to have been invoked by virtue of Section 110 of Evidence Act by both the Courts below. Another fact is also required to be considered is that, ownership of a land cannot remain in abeyance. Here a third party is not coming forward to claim ownership. If both the parties to the proceeding are held to be 'not the owners', then such situation leads to a chaos which is not expected and especially to avoid such situation provisions like Section 110 of Evidence Act have been enacted. Therefore, the substantial question of law is answered in the affirmative. In consequence the second appeal succeeds.

ORDER

1) Appeal is hereby allowed as follows ;

i) The Judgment and decree passed in Regular Civil Appeal No.05 of 1993, passed by learned District Judge, Beed on 27-11-2003 and Judgment and decree passed in Regular Civil Suit No.230 of

1982 by 3rd Jt. Civil Judge, Junior Division, Beed on 31-07-1992 is hereby set aside to the extent of refusal of granting ownership over the suit lands. The said suit stands decreed in entirety.

ii) Plaintiffs i.e. present appellants are declared as owners of land Survey No.16/E/5 and Survey No.22/E/6 to the extent as shown in the map appended to the plaint in Red colour.

iii) It is clarified that there is no change in the judgment and decree passed in Regular Civil Appeal No. 270 of 1992.

2) For the above said reasons, parties to bear their own cost of the proceeding. Decree be drawn accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.