

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 SECOND APPEAL NO.340 OF 2017

Cotton Research Centre,
Through Cotton Specialist
Lalitdas s/o Anandrao Deshpande,
Age 56 years, Occupation Service,
R/o Hyderabad Road, Nanded
(Retired)
Dr. Devrao s/o Baburao Devsarkar,
Age 45 years, Occupation Service,
R/o Geetanagar, Nanded,
(Transferred to other dept.)
At Present Dr. Khizer Baig s/o
Mirza Samad Baig, Age 47 years,
Occupation Service, R/o Hyder
Bagh No.2, Degloor Naka, Nanded,
Taluka and District Nanded.

...Appellant.

VERSUS

Nirankar Kaur w/o S. Deep Singh
Gadiwale, Age 40 years,
Occupation Household,
R/o Gurudwara Gate No.2 Badpura,
Nanded Taluka and District Nanded.

...Respondent.

.....

Mr. Nandagawale, Advocate holding for Mr. V. G. Sakolkar,
for appellant.

Mr. S. S. Choudhary, Advocate for respondent.

.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 19-06-2019.

ORAL ORDER :

1. Present appeal has been filed by the original defendant challenging the concurrent Judgment and decree passed in Regular

Civil Appeal No.81 of 2008 by learned District Judge - 5, Nanded, dated 01-03-2017 and the Judgment and decree passed in Regular Civil Suit No.152 of 2005 by learned Civil Judge, Senior Division, Nanded dated 30-04-2007.

2. Present respondent had filed the said suit for declaration and injunction. The suit came to be partly decreed. She has been held to be not the owner of the suit property i. e. land admeasuring 50 feet X 115 feet of Survey No.86 situated on the corner of Degloor - Hyderabad road in Nanded, which has been more particularly described in para 01 of the plaint. However, the relief of injunction was granted to her. The defendant, its servant, agents etc. were restrained from causing any obstruction or interference in the possession of the plaintiff, over the suit land except according to procedure established by law. The said Judgment and decree as aforesaid was challenged in the appeal and the appellate Court has dismissed the said appeal. The said appeal was filed by the present appellant.

3. Heard both sides. Both have made submissions in respect of their contentions.

4. Perusal of the record especially the Judgments pronounced by both the Courts below would show that, both the Courts have accepted that the Government had acquired the suit property and had handed it over to the defendant in the year 1976, however the evidence has come which shows that, the plaintiff has made encroachment since 1997. In fact it was the case of the plaintiff that, she got the possession of the suit property from one Bholasingh s/o Attersingh Bongai by way of agreement to sell dated 15-03-1997 for a consideration of Rs.80,000/-. It has been held by both the Courts that, taking into consideration the acquisition by the State and then handing it over to the defendant, Bholasingh s/o Attersingh Bongai cannot be said to be the owner of the property who could execute the agreement to sell in favour of plaintiff. However, then it appears that, both the Courts on factual aspect held the plaintiff to be the possessor of the suit land and when she was in settle possession it is stated that, it cannot be disturbed otherwise than due procedure of law.

5. Taking into consideration all these aspects which have been elaborately considered by both the Courts below, no substantial question of law can be found and there is no substance in the

submission that since the plaintiff had encroached on the property of the Government, she cannot be protected. Though the plaintiff has been held to be the encroacher, taking into consideration the ratio laid down in, *Rame Gowda (Dead) By LRs. Versus M. VARADAPPA Naidu (Dead) By LRs. And Another*, reported in (2004) 1 Supreme Court Cases 769, the protection was granted to the plaintiff. Hence, the second appeal disposed of as not admitted.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.