

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

912 SECOND APPEAL NO.411 OF 2019

1. Ganpat s/o.Bhaurao Bingewad.
2. Raju s/o.Ganpati Bingewad.

..APPELLANTS

VERSUS

1. Lingoji s/o. Jethiba Godewad.
2. Laxmibai w/o. Kerba Godewad
Died [Through L.R.].
- 2.i Laxmibai w/o.Bhaurao Bingewad.

..RESPONDENTS

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Mr.A.A.Fulfagar, Advocate holding for
Mr.P.R.Katneshwarkar, Advocate for the
appellants.

Mr.U.B.Bilolikar, Advocate for respondent
no.1.

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CORAM : V.L.ACHLIYA,J.

DATE : 15.10.2019

PER COURT:

1] Being aggrieved by the concurrent decisions rendered by the Courts below, the appellants—original defendant nos.1 and 2 have preferred this Appeal.

2] Heard learned counsel for the appellants and the respondent-plaintiff. Perused the impugned judgment and decree passed by the trial Court and confirmed in Appeal.

3] In brief, it is the contention of the learned counsel for the appellants—original defendant nos.1 and 2 that the Courts below erred in appreciating the evidence in its proper perspective. It is contended that the Superintendent of Land Records has passed the order on the basis of the actual possession of the suit property.

4] It is submitted that the original plaintiff has filed suit for declaration, ownership and possession in respect of land bearing Survey Nos. 6/3 and 6/7 situated at village Somthana, Taluka Bhokar, District Nanded [hereinafter referred as 'suit land']. The plaintiff has further claimed relief to set aside the sale deed dated 22.12.2003 executed in respect of Survey No.6/7 with consequential relief of perpetual injunction to restrain the appellants – defendants from disturbing the possession of plaintiff over the suit land.

5] It is submitted that the suit land is a part of old Survey No.6. In a partition, the Survey No.6 divided into 9 shares i.e. *Pot Hissa*. Out of 9 shares, two shares were allotted to Ramji Godewad, the brother of

grand-father of plaintiff. One of such share out of 2 share allotted to Ramji was acquired for 'Kabrasthan'. The Survey Nos.6/3, 6/6 and 6/7 were allotted to the share of Kerba. The land bearing Survey Nos.6/2, 6/4 and 6/5 were allotted to share of Jetiba. Since the date of partition, the allottees were cultivating and in actual possession of said survey numbers which came to their respective share. However, in revenue record wrong entries came to be recorded in respect of possession and ownership of land bearing Survey nos.6/4 and 6/7. Therefore, the defendant nos.1 and 2 i.e. the appellants made application before the Superintendent of Land Records, Nanded, to correct the revenue record in respect of Survey Nos.6/3, 6/4 as well as to delete the name of plaintiff as owner and in possession of Survey No.6/7 and mutate the name of defendant no.1 in place of plaintiff. So also the request was made to delete the name of plaintiff from Survey No.6/3 and mutate name of the defendant no.2 in his place. So also request was made to delete name of the defendant no.2 from Survey No.6/4 and mutate the name of the plaintiff in his place. The Superintendent of Land Records, after conducting enquiry in respect of actual and

physical possession of the plaintiff and defendants, allowed the application filed by the defendants, and accordingly, directed the revenue authority to correct the entries in respect of Survey Nos.6/3, 6/4 and 6/7. Accordingly, revenue entries were corrected. As the defendant no.1 was in need of money, she sold agricultural land bearing Survey No.6/7 to defendant no.3. In brief, it is the contention of the appellants – defendants that the plaintiff is owner and in physical possession of agricultural land bearing Survey Nos.6/2, 6/4 and 6/5 and the defendant nos.2 and 3 are the owners and in physical possession of land bearing Survey Nos.6/3, 6/6 and 6/7.

6] It is submitted that the Courts below failed to appreciate the evidence in its proper perspective. The vital admission brought through the evidence of witnesses examined in the case has been overlooked by the Courts below. The respondent no.1 has admitted in cross-examination the possession of respondent no.2 over the field Survey No.6/7 from last more than 30 years. However, this vital admission brought through the cross-examination of respondent no.2 has been

ignored by Courts below. So also the evidence of DW-3 and DW-4 not appreciated in proper perspective. It is submitted that the Superintendent of Land Records has passed the orders on the basis of actual and physical possession of the land in dispute.

7] On the other hand, learned counsel for the respondent—original plaintiff opposed the admission with contention that the appeal raises no substantial questions of law. It is contended that this is the second round of litigation. In earlier round of litigation, the suit filed by plaintiff came to be decreed. In an Appeal preferred by the respondent, the case was remanded to trial Court for fresh decision. After remand of the case, the trial Court has once again passed decree in favour of the respondent—plaintiff. The appeal preferred by the appellants was dismissed. In this background, learned counsel submits that there are concurrent findings on facts recorded by the Courts below. The appeal raises no substantial question of law to entertain appeal and urged to dismiss the Appeal.

8] On due consideration of the submissions advanced, I am of the view that

Appeal raises no substantial question [s] of law, so as to entertain Appeal. There are concurrent findings on facts recorded by the Courts below. There is no perversity in any of the reasons and findings recorded by the Courts below. It is an admitted position that no deed of rectification executed before and after passing of the order by the Superintendent of Land Records. The findings on facts recorded by Courts below are based upon close scrutiny of evidence adduced in the case. There is no perversity in the findings recorded by Courts below. In absence of any substantial question of law involved in Appeal, the appeal deserves no consideration. I am, therefore, not inclined to entertain Appeal. Accordingly, the Appeal is dismissed. In view of dismissal of Appeal, the Civil Application No.8591/2019 stands disposed of in terms of order in appeal.

[V.L.ACHLIYA]
JUDGE

DDC