

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

28 SECOND APPEAL NO.565 OF 2015

BABASAHEB GOVIND SASE

VERSUS

SURYABHAN LIMBRAJ SASE AND OTHERS

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Mr. V.S. Badakh, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 14th JANUARY, 2019

PER COURT :

1 Heard learned Advocate appearing for the appellant. Perused the impugned Judgment and Decree.

2 The appellant is the original plaintiff, who intends to challenge the Judgment and Decree dated 08.09.2015 passed by learned District Judge-3, Ahmednagar in Regular Civil Appeal No.361/2012, in which the Judgment and Decree dated 02.04.2012 passed by learned 4th Joint Civil Judge Senior Division, Ahmednagar in Regular Civil Suit No.122/2009 came to be confirmed.

3 The present appellant-original plaintiff had filed the said suit for permanent injunction. The said suit came to be dismissed and the appeal preferred by him has also been dismissed. The plaintiff had come with the case that he is the owner of western side 62 Ares land from Gat No.537 (New Gat No.3432) (Old Sy. No.1615/25). It is stated that the said suit property of which the boundaries were given was the ancestral property of plaintiff and the plaintiff has possession over the same. However, it is barren since 20-25 years prior to the suit. Defendant Nos.4 and 6 who are the purchasers were never possessing the said land. None of the defendants had possession over the suit property. The suit property was received by the plaintiff in partition. However, his name was not mutated to the revenue record and therefore taking disadvantage of the said fact the sale deed was executed. So also the other defendants had instigated defendant Nos.4 and 6 to file R.C.S. No.47/2009 against him. When the plaintiff went to cultivate the land on 04.04.2009 he was obstructed by the defendants and therefore the suit was filed.

4 The suit was resisted by defendant Nos.1, 4 and 6. It was specifically contended that land bearing Gat No.537 admeasuring 1 Hectare 27 Ares came in the name of father of defendant Nos.1, 6 and 10

viz. Limbraj Uma Sase vide Mutation Entry No.15267. Plaintiffs grandfather Yashwant Bhima Sase received land bearing Gat No.536 admeasuring 01 Hectare 10 Ares and accordingly in the same Mutation Entry the entry is made. Since the Mutation Entry Yashwant and Limbraj were cultivating the lands separately and therefore it is stated that plaintiff has no right, title or interest in Gat No.537. It is also stated that there was a measurement of the sub divisions in the past and out of the said land Western side 62 Ares land was sold by Limbraj to one Kantilal Tathed during his life time. Subsequently, the defendant Suryabhan and Baburao purchased 31 Ares land each from Kantilal. Thereafter, Suryabhan sold his 31 Ares land to one Gorakh Murlidhar Dhokane and defendant No.4 Radhabai purchased the said land about 3 years prior to the suit. Mutation Entries have been taken at each point of time whenever the sale deeds were executed.

5 Taking into consideration the rival contentions, Issues came to be framed, parties adduced evidence and after hearing both sides and perusing the evidence on record the suit came to be dismissed. After hearing both sides the appeal has also been dismissed.

6 The learned Advocate appearing for the appellant submitted

that both the Courts below have recorded perverse findings as regards the possession of the plaintiff over the suit land. The evidence adduced to prove the possession was in the form of payment of taxes and the oral evidence. It was specifically pointed out that the plaintiff is running a small grocery shop just adjacent to the said land.

7 It is to be noted that as regards the facts of the case are concerned, the perusal of both the impugned Judgments show that entire evidence, oral or documentary, appears to have been considered by both the Courts below. The plaintiff did not bring any evidence on record as to how he received the property though at one place it appears that it was contended that it was his ancestral property and then he says that by way of partition he received the same. If the partition was effected then evidence of affidavit ought to have been adduced. Thereafter, specific evidence has been adduced as well as the fact is not in dispute or challenged by the plaintiff that thrice the sale deeds were executed in respect of the suit land and at any point of time he had not challenged the same. The Mutation Entries were also not immediately challenged though a statement has been made that subsequently he had challenged the same. Thus, the best possible evidence which could have been

brought on record that if the partition was before the implementation of the consolidation scheme then the record of the consolidation scheme itself would have reflected the partition. Another fact is that the plaintiff has absolutely not given any reason as to why for so many years i.e. 20-25 years the land being kept barren. It is not the case of the plaintiff that the land is uncultivable, further, if his grocery shop is adjacent to the land it would have been very much convincing for him to cultivate the land. When admittedly, as per his own contention, the land was kept barren for about 20-25 years, then for showing possession for open land more specific evidence ought to have been adduced. Therefore, taking into consideration the oral as well as documentary evidence on record it appears that the concurrent findings have been given and therefore, no substantive question of Law has been raised. Hence, the appeal is dismissed.

(Smt. Vibha Kankanwadi, J.)

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