

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

SECOND APPEAL NO.564 OF 2015

1 Govind Yashwant Sase (Dead)
Through : Legal Heirs

1A Yamuna Govind Sase,
Age 53 yrs., Occ. Household

1B Vaishali Madhukar Dhormal,
Age 28 yrs., Occ. Household,

2 Babasaheb Govind Sase,
Age 41 yrs., Occ. Agri.,

3 Vishnu Govind Sase,
Age 31 yrs., Occ. Agri.,

4 Sonali @ Sonubai Babasaheb Sase,
Age 36 yrs., Occ. Agri.,

All are r/o Sasewadi,
Taluka and District – Ahmednagar.

... **Appellants.**

... **Versus** ...

1 Radhabai Raosaheb Sase,
Age 41 yrs., Occ. Agri.,

2 Babu Limbraj Sase,
Age 41 yrs., Occ. Agri.,

All are r/o Sasewadi,
Taluka and District – Ahmednagar.

... **Respondents.**

...

Mr. Vishal S. Badakh, Advocate for the appellants

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14th JANUARY, 2019

JUDGMENT :

1 Present appeal has been filed by the original defendants. Present respondents are the original plaintiffs, who had filed Regular Civil Suit No.47/2009 for permanent injunction. The said suit came to be decided by 4th Joint Civil Judge Senior Division, Ahmednagar on 02.04.2012. The suit was decreed. The plaintiffs had come with a case that agricultural land Gat No.538 situated at village Sasewadi, is the property belonging to their family and it is situated towards East of Gat No.537. In fact, Gat No.537 was also their property. They were part of earlier Sy.No.1615/25 (Gat No.3432) and present Gat No.537. There was a measurement of original Sy.No.1615/12 on 22.07.1968, which was then subdivided (Pot Hissa) and thereafter Mutation Entry No.15267 was taken on 01.11.1968. By the said survey and mutation, defendants predecessor Yashwant Bhima Sase's name was entered to Sy.No.1615/22

and name of Limbraj Sase was given to Sy.No.1615/25. Since then all of them are cultivating their land separately. The ancestor of plaintiffs and defendants was one Hari Sase, who had two sons Uma and Pandurang. Uma had three sons viz. Naruti, Limbraj and Yashwant, whereas, Limbraj had three sons Suryabhan, Babu and Kundlik. After death of Kundlik name of his son Natha was mutated. Pandurang's son was Bhima and his son was Yashwant. Yashwant had son by name Govind i.e. defendant No.1. Defendant Nos.2 and 3 are the sons of Govind and defendant No.4 is wife of defendant No.2. It is stated that part of Gat No.3432 to the extent of western side 62 Ares was sold by Limbraj Sase to one Kantilal Tathed. Thereafter, Suryabhan and Baburao purchased 31 Ares each out of the said land from Kantilal. Thereafter, Suryabhan sold his 31 Ares land, which was situated towards North-West corner to one Gorakh Dhakne. That property was purchased three years ago by plaintiff No.1. After the sale deed, plaintiff Nos.1 and 2 are cultivating their half of share separately. They are taking crops like Hulga, Math and Bajra in the said land. In fact, defendant Nos.1 and 2 had desire to purchase the said property from Gorakh Dhakne, but it was sold to plaintiffs. Therefore, they were annoyed and therefore, when plaintiffs went for cultivation,

defendants started obstructing them by abusing and threatening. When plaintiff No.1's daughter Dipali went to the field on 18.01.2009, at that time, she was assaulted and abused by defendant No.2. She was threatened that they will not allow the plaintiffs to take crops and therefore, suit for perpetual injunction was filed.

2 All the defendants filed common written statement. It is stated that the suit property is their ancestral property and it is in their possession. The entire property is barren and it is stated that there are big trees in the property. By the side of the road in the suit property there is shop premises (Tapri), which is being conducted by defendants. The vendor of the plaintiffs was not in possession of the suit property. That document is sham and bogus and therefore they prayed for dismissal of the suit.

3 With this kind of pleadings parties went to trial. After taking into consideration the evidence on record and hearing both sides learned Advocates, Court held that plaintiffs are in possession of 62 Ares land, which is situated towards western side in Gat No.537. It was also held that the defendants are obstructing their possession and therefore the suit was decreed.

4 The defendants challenged the said decree in Regular Civil Appeal No.362/2012. The said appeal came to be decided by learned District Judge-3, Ahmednagar on 08.09.2015. The said appeal has been dismissed. The original defendants, therefore, intend to challenge the Judgment and Decree in this Second Appeal.

5 Heard learned Advocate Mr. V.S. Badakh for the appellants. Taking into consideration his argument it is not necessary to issue notice to the respondents. It was for the appellants to show that there is substantial question of law involved in the Second Appeal. The learned Advocate submitted that both the Courts below failed to consider that the plaintiffs had not sought any declaration in respect of their alleged ownership, when the said prayer for injunction ought not to have been considered. Further, they have not considered that there is a shop premises, which is in existence since years together in the suit premises, which shows that plaintiffs were never in possession of the suit property. Both the Courts have not taken into consideration the panchnama that has been drawn by Tahsildar in the revenue proceedings. The authenticity of the Grampanchayat register extract has not been considered. No documents regarding cultivating of the suit land was

produced by plaintiffs and therefore the substantial question of law regarding perversity in the findings is arising.

6 It is to be noted that whatever has been argued and whatever the grounds has been raised in the appeal memo would show that they are only the facts of the case. There is no question of substantial question of law involved. Even if we consider the facts of the case, it is to be noted that on no point of time any sale transaction which was alleged and shown by the plaintiffs, was challenged by the defendants. In fact, defendant No.2, who had entered the witness box had admitted in his cross examination that his grandfather Yashwant had not taken any objection in respect of implementation of consolidation scheme. In the said scheme Sy.No.1615/25 was given number as 3432 and Sy.No.1615/22 was given number as 3430. Evidence does now show that Gat No.3432 has been then converted/renumbered to Gat No.537 and it was given to Yashwant and thereafter it devolved on Govind i.e. defendant No.1. Plaintiffs have proved that by registered document the western side 62 Ares land from Gat No.537 was given to their predecessor. The mutation entries had not been challenged on behalf of the defendants. Under such circumstance, there was no documentary

evidence to show that the suit property, which is more particularly described in para 2 of the plaint, was owned and possessed by defendants.

7 The learned First Appellate Court has rightly relied on a decision in **Anathula Sudhakar vs. Buchireddy** reported in **AIR 2008 SC 2033**. Taking into consideration the ratio laid down in that Judgment, there was absolutely no pleadings on the title of the plaintiffs in the present case and therefore, there was no reason for the plaintiffs to pray declaration. The plaintiffs had come with a positive case that they are the owners of the property by virtue of sale deed and they were put in possession of the purchased property by their vendor. Under such circumstance, the evidence has been properly appreciated by both the Courts below. Absolutely, there is no perversity in the same. Therefore, no case is made out, even to issue notice. The Second Appeal is dismissed. Pending Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

agd