

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.69 OF 2017
WITH
CIVIL APPLICATION NO. 15470 OF 2017

Ganpat Namdeo Sakhare and others ...Appellants

versus

The State of Maharashtra and others ...Respondents

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Mr. Nitin Jagdale h/f Mr. V.D. Salunke, advocate for the appellants.
Mr. K.B. Jadhavar, A.G.P. for respondent No.1 to 3.

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CORAM : V. K. JADHAV, J.
DATED : 6th DECEMBER, 2019

PER COURT:-

1. By consent, heard finally at admission stage.
2. The appellants are the original plaintiffs. They have instituted R.C.S. No. 38 of 1995 against the respondent State for declaration of ownership and decree of perpetual injunction in respect of land survey No. 104/E situated at Kaij, District Beed. By judgment and decree dated 13.12.1996, the trial court has decreed the suit in terms of the relief claimed by the appellants-plaintiffs. Being aggrieved by the same, the respondent-original defendant-State has preferred Regular Civil Appeal No. 40 of 2004 and the learned District Judge, Ambajogai, by judgment and order dated 13.9.2017, allowed the appeal and quashed and set aside the judgment and decree passed

by the trial court and remanded the matter to the trial court for fresh hearing by giving opportunity to the State to lead evidence including the cross examination of the plaintiffs' witnesses on payment of costs of Rs.14,000/-. Hence, this Appeal from order preferred by the original plaintiffs.

3. Learned counsel for the appellants-original plaintiffs submits that though the respondent State had appeared and resisted the suit by filing written statement Exh.19, they failed to cross examine the witnesses of the plaintiffs nor adduced any evidence. Learned counsel submits that the suit is of the year 1995, no special treatment can be given to the State. Even though the respondent State has not explained about non cross examination of witnesses of the plaintiffs, first appellate court has allowed the appeal and remanded the matter to the trial court without any reason.

Learned counsel for the appellants, in order to substantiate his contentions, placed reliance on the judgment of Supreme Court in the case of ***Collector, Land Acquisition Anantnag vs. Katiji, reported in 1987 AIR (SC) 1353.***

4. Learned A.G.P. for the respondent-State submits that the suit land came to be acquired by the Government for Veterinary Hospital, Godown and road i.e. 27 gunthas, 1 acre 29 gunthas and 11 gunthas, respectively, total 2 acres 27 gunthas from one Shaikh

Rahim, who happened to be the original owner of the suit land. However, after his death, his legal heirs substituted him and sold the plots to the appellants-original plaintiffs. Learned A.G.P. submits that the suit land is Inam land and the said alienation without the permission of the Collector itself is void. Learned A.G.P. submits that the first appellate court has given opportunity to the respondents State to cross examine the witnesses of the plaintiffs and also to lead evidence to substantiate their contentions. There is no substance in this appeal from order and the same may be dismissed.

5. It appears that though the respondent State has contested the suit by filing written statement and denied the title of vendor of appellants, failed to cross examine the appellants-original plaintiffs' witnesses on this point and further failed to adduce any evidence to substantiate its contention. However, the suit land came to be acquired for various purposes and the building for Veterinary Hospital and godown are already constructed on the suit land and road is also in existence. The land is absolutely vested in the Government after its acquisition and as such, the vendor or the appellants would not get any right to alienate the suit land to the appellants. In view of this, I do not find any substance in this appeal from order. The State must get one opportunity to defend the suit on merits by effectively cross examining the plaintiffs' witnesses so also adducing the evidence. It further appears that the first appellate court has recorded the finding to point No.1 in negative. However, once the

appellate court has decided to remand the matter, there is no question of recording the finding to any of the point and those points are required to be kept as redundant. In view of the same, the findings recorded to point No.1 in Regular Civil Appeal No. 40 of 2004 shall be treated as redundant. In view of above, I proceed to pass the following order:-

O R D E R

- I. The appeal from order is hereby dismissed.
- II. Since the suit is of the year 1995, the trial court is hereby directed to dispose of the suit as expeditiously as possible on priority basis within a period of six months from today.
- III. In view of dismissal of appeal from order, nothing remains for consideration in pending civil application No. 15470 of 2017 and the same is also disposed of.

(V. K. JADHAV, J.)

rlj/