

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 447 OF 2016
WITH
CIVIL APPLICATION NO.696 OF 2016
IN
SECOND APPEAL NO.447 OF 2016
WITH
SECOND APPEAL NO.884 OF 2016**

Kuber Vishnu Shinde & Anr. ...Appellants

V/s.

Bhagirathi Shankar Khilare & Anr. ...Respondents

....

Shri S. R. Ghanvat I/b Shri V. S. Talkute, advocate for the appellants.

Shri Ajay Joshi a/w Shri Lalasaheb Bandal, advocate for the respondents.

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CORAM : M.S.KARNIK, J.

DATE : 20th JUNE, 2019

P.C. :

1. Heard learned counsel for the appellants and learned counsel for the respondents.
2. Learned counsel for the appellants by assailing the concurrent findings of the courts below submitted that the present respondents/original plaintiffs were the owners of land bearing Gat No.365 admeasuring 5H 46R. Between the year

1976-1985, out of the said land, 2H 95R was acquired by the Government for the Ujani Dam Project. In the year 1982 the respondents sold 2H of land to one Digambar Krushna Nagare. On 28/07/1983 the appellant purchased this 2H land from Digambar. On 26/11/1986 the appellants purchased 51R land from the respondents. It is the contention of the learned counsel for the appellants that thus after the acquisition of the land for Ujani Dam Project and the sale of remaining portion in favour of the appellants, no land remained in possession of the respondents.

3. The respondents filed a suit for injunction restraining the appellants from disturbing their possession over the land admeasuring 2H 37R. Based on the revenue records and the 7/12 extracts and other materials on record, the trial court came to the conclusion that the said land is in possession of the respondents and therefore granted the injunction. The injunction of the trial court is confirmed by the appellate court.

4. Learned counsel for the appellants submitted that by a writing made before the Tahsildar, respondent No. 1 handed

over the suit land admeasuring 2H 37R to the appellants, who are in possession of the said land since then. Learned counsel would submit that taking advantage of the revenue records which is still standing in the name of respondents, the respondents filed a suit restraining the appellants from disturbing their possession. He would submit that the said land is in fact in the possession of the appellants.

5. I have gone through the concurrent findings recorded by the courts below. It is not in dispute that in respect of the suit land admeasuring 2H 37R, the same has been acquired for Ujani Dam Project. Revenue records are in the name of respondents. The courts below have recorded a finding of fact that the respondents who are in possession of the said land. The courts below disbelieved the case of the appellants that the possession was handed over by the respondents to them.

6. In any case, when the suit land in question is already acquired for Ujani Dam Project by the State Government, the appellants cannot claim any right in the said suit property. The appellants are admittedly in possession of that portion of the

land which was sold by the respondents to them.

7. The counter claim for injunction made by the appellants is rejected by the trial court as well as the first appellate court. No interference is warranted in the findings of fact.

8. No substantial question of law is involved in these appeals. In this view of the matter, both the appeals are dismissed.

9. In view of the dismissal of the appeals, nothing survives for consideration in Civil Application. Civil Application is disposed of.

(M.S.KARNIK, J.)