

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SA NO.11/2019
Dharmaraj s/o Motiramji Thakre
..VS..
Punjaji Govindrao Thakre and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri J.J.Chandurkar, Counsel for the Appellant.

CORAM : V.M.DESHPANDE, J.
DATED : JUNE 28, 2019.

1. The present appeal is by original plaintiff whose suit for possession was decreed and learned Civil Judge Senior Division, Daryapur on 30.6.2010 in Regular Civil Suit No.32/2000 directed defendants to hand over vacant possession of gat No.207 within a period of 60 days.
2. Defendant No.4 Punjaji filed an appeal before Lower Appellate Court. The said appeal was registered as Regular Civil Appeal No.92/2010 and learned 1st District Judge, Achalpur, vide judgment and decree dated 1.8.2018, allowed the appeal filed on behalf of defendant No.4 and dismissed Regular Civil Suit No.32/2000.
3. Heard learned counsel Shri J.J.Chandurkar for the appellant-plaintiff, *in extenso*. Also, with his able assistance, I have gone through judgments and decrees passed by learned Judges of both the Courts below. Learned counsel also made available to me copy of paper-book of Lower Appellate Court which contains rival pleadings, as well.

4. According to the appellant-plaintiff, in the year 1997, more specifically on 23.6.1997, he purchased gat No.207, situated at village Ramtirth, taluka Daryapur, District Amravati, for valuable consideration from defendant No.1-Murlidhar Ramdas Thakre. Sale-deed was registered on the next day i.e. on 24.6.1997. According to the appellant-plaintiff, the possession was given to him. Case before the Court below by the appellant-plaintiff was that after a lapse of some time, he measured the land through DILR and the said DILR gave "C-Copy" of the said map which shows that the appellant-plaintiff was in possession of gat No.206 in stead of gat No.207. He, therefore, filed a suit for possession against defendant Nos.1 and 2.

5. During pendency of the suit, an application under Order I Rule 10 was moved for joining Rameshwar and Punjaji as defendant Nos.3 and 4. The application was allowed and accordingly they were joined as defendant Nos.3 and 4.

6. Defendant No.2 remained *ex parte*. Defendant Nos.3 and 4 filed their joint written statement.

7. Some and substance of pleadings of defendant Nos.3 and 4 was that on 24.6.1997 the defendant executed a sale-deed in favour of the appellant-plaintiff in respect of gat No.207 area 1H and 20R and the appellant-plaintiff was put in actual physical possession of the said land. It was also their pleadings that on 13.12.2000 defendant No.3 executed sale-deed in favour of defendant No.4 in respect of gat No.206 and he was placed in placed in possession.

8. Sale-deed executed by defendant No.1 in favour

of the appellant-plaintiff is at Exhibit 34. The said shows that after receiving valuable consideration, defendant No.1 passed his title in respect of gat No.207 in favour of the appellant-plaintiff. Not only that, sale-deed recites that on the day of the execution of the sale-deed the appellant-plaintiff was placed in possession of the agricultural land. It is also not in dispute that after obtaining sale-deed, name of the appellant-plaintiff was mutated in relevant revenue records. Those revenue records are also placed on record which shows that name of the appellant-plaintiff was mutated as owner and shows that he is in possession of gat No.207.

9. According to the appellant-plaintiff, while handing over possession, after executing of the sale-deed, defendant No.1 played fraud on him and instead of putting him in possession of gat No.207, he was placed in possession of gat No.206. Thus, the case of fraud was pleaded. Though these are pleadings, evidence is conspicuously silent on the part of the appellant-plaintiff as to how and in which manner fraud was practised upon him.

10. Further, learned Judge of the Lower Appellate Court, in my view, rightly considered the aspect that very intelligently the plaintiff has not described boundaries of the field in the plaint which is mandatory in view of Order VII Rule 3 (Bombay Amendment).

11. Also, entire plaint is conspicuously silent as who is in possession of gat No.207. If the appellant-plaintiff was placed in possession of gat No.206 instead of gat No.207, it was duty of the appellant-plaintiff to disclose name of person

who is in possession of gat No.207. Even before this Court, to this query, learned counsel for the appellant-plaintiff could not disclose name as to who is in possession of gat No.207.

12. Even, as per appellant-plaintiff, he holds title documents in respect of gat No.207. All revenue records show appellant-plaintiff's possession over filed gat No.207. However, it is his case that as per "C-Copy" of map he is shown to be in possession of gat No.206.

13. Thus, the appellant-plaintiff is the person who wants to claim possession on the basis of "C-Copy" in respect of gat No.206 and wishes to have retained the possession over gat No.207 on the basis of title document. This is an obvious from fact that the appellant-plaintiff is not disclosing that who is in actual possession of gat No.207.

14. All the aforesaid discussions, according to me, do not involve any substantial question of law. Also, the said is appreciation of evidence and Lower Appellate Court, being last Court for recording findings, in my view, rightly recorded such findings.

15. In this view of the matter, the second appeal is dismissed. No costs.

JUDGE

!! BRW !!