

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

927 SECOND APPEAL NO.41 OF 2019
WITH CA/10338/2018
IN SA/41/2019

ANANDRAO BHILA PATIL
VERSUS
SARPANCH, GROUP
GRAMPANCHAYAT, BRAHMANE AND ANOTHER

...
Mr.V.Y.Patil, Advocate for appellant.
Mr.P.B.Patil , Advocate for R-1.

...
CORAM : V.L.ACHLIYA, J.
DATE : 17/02/2020

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ORAL ORDER:

1. Being aggrieved by the Judgment and order dated 16/09/2017 passed by District Judge-2, Jalgaon in R.C.A. No. 97/2011 thereby allowed the appeal and set aside the Judgment and decree dated 31/03/2011 passed by Civil Judge [J.D.], Erandol, District Jalgaon in R.C.S. No. 33/2007, the appellant/original plaintiff preferred this appeal.

2. Heard learned counsel for appellant and respondent. Perused the Judgments and decree passed by trial Court as well as first appellate Court.

3. In brief, it is the contention of learned counsel for appellant that appellant is in lawful possession of suit property by virtue of resolution passed by Village Panchayat to lease out suit property on yearly rent of Rs. 3/-. It is submitted that possession of plaintiff over suit land can not be termed as illegal and unauthorized to be treated as encroachment which can be removed at the instance of respondent No. 1/Village Panchayat. It is submitted that trial Court has decreed the Suit. The appellate Court has set aside the decree without any case being made out to interfere with the Judgment and decree passed by trial Court and dismissed the Suit. It is submitted that first appellate Court has exceeded its jurisdiction to interfere with the Judgment and findings recorded by trial Court in absence of any perversity in the reasons and findings recorded by trial Court.

4. On the other hand, learned counsel for respondent opposed the admission of appeal with contention that except the copy of alleged resolution claimed to be passed in the year 1984 in the meeting of Village

panchayat to lease out the suit land on yearly rent of Rs. 3/-, no evidence has been adduced to prove that the lease of property executed in favour of plaintiff and plaintiff was put in possession of suit land pursuant to the said resolution. Neither any lease deed produced on record nor any receipt of payment of rent in terms of resolution tendered in evidence by plaintiff. It is submitted that in the year 1984, the appellant was member of village panchayat and holding the post of Deputy Sarpanch. He got the resolution recorded in the proceedings book granting lease by mis-using his official position as a Deputy Sarpanch. By inviting attention to sections 55 and 56 of Maharashtra Village Panchayat Act [for short, 'said Act'], learned counsel submits that no procedure as prescribed under said provisions followed to grant lease of suit property to plaintiff. It is submitted that village panchayat holds no right to grant lease of its immovable property for a period of more than 3 years that too without seeking approval from Chief Executive Officer.

5. On due appreciation of submissions

advanced in the light of Judgment and order passed by courts below, I am of the view the appeal raises no substantial question(s) of law. It is apparent from the face of record and particularly the findings recorded by first appellate Court that there is absolutely no evidence to show that the plaintiff is in lawful possession of suit property. Except the resolution claimed to be passed in the year 1984, there is nothing to show that plaintiff put in possession of suit property in the year 1984 and since then he is in continuous lawful possession of suit property. Although the plaintiff claimed that rent was finalized as Rs. 3/- per year, the plaintiff could not produce a single receipt of payment made to village panchayat so as to show that rent was paid and accepted by village panchayat.

6. As provided u/s 56 of said Act, no lease, sale or other transfer of any such immovable property by the panchayat shall be valid without the previous sanction of the Chief Executive Officer. In the case in hand, there is no sanction for lease of suit property in favour of plaintiff in terms of section 56. Apart from this, section 55 of said Act

provides that no lease of immovable property can be made by the village panchayat exceeding 3 years without seeking prior sanction. Sections 55 and 56 of said Act reads as under.

“ 55. Competency of Panchayat to lease, sell or transfer property

– Every Panchayat shall be competent to lease, sell or otherwise transfer moveable or immoveable property which may become [vested in (otherwise than under the provisions of sub-section (1) of Section (51) or be acquired by it and to contract and do all other things necessary for the purposes of this Act :

Provided that no lease of immovable property other than property referred to in sub-section (1) of section 56 for a term exceeding three years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the [Chief Executive Officer].

56. Property of Panchayat – (1)

[It shall be competent for a Zilla Parishad from time to time to direct that any property vesting in it] shall vest in a Panchayat and no such direction being issued, [the property shall, subject to rules made in that behalf, vest] in the Panchayat notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908 :

Provided that no lease, sale or other transfer of any such immovable property by the panchayat shall be valid without the previous sanction of the [Chief Executive Officer].

(2) Every work construed by a Panchayat out of the village fund, or with Government assistance or peoples' participation shall vest in such Panchayat [and every work constructed by a Panchayat with

the assistance of Zilla Parishad or Panchayat Samkiti shall vest in a Panchayat in the manner provided by rules made in that behalf].

7. Thus, in the light of provisions quoted above, the possession of plaintiff over suit land is illegal and as that of encroacher. In that view, the proceeding initiated by village panchayat to remove encroachment is well within the four corners of law and in exercise of powers vested with the village panchayat. In fact to remove encroachment is statutory obligation on the part of village panchayat. No injunction can be granted to prevent statutory body to exercise its powers in accordance with law. In that view, the first appellate Court fully justified in setting aside the decree of granting permanent prohibitory injunction passed by trial Court.

8. The appeal preferred is devoid of merit and raises no substantial question(s) of law. I am, therefore, not inclined to entertain the appeal. Accordingly, the appeal is dismissed with no order as to costs. In view

of dismissal of appeal, C.A. No. 10338 of 2018 is dismissed and stands disposed of.

[V.L.ACHLIYA]
JUDGE

KNP