

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

SECOND APPEAL NO.13 OF 2020

**BAPURAO KERBA DESHMUKH AND OTHERS
VERSUS
AGRICULTURAL PRODUCES MARKET COMMITTEE, TADKALAS THRO.
PRESIDENT AND OTHERS**

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Advocate for the Appellants : Shri Shelke Shivaji T.

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CORAM: S. M. GAVHANE, J.

DATE :- 15th January, 2020

Per Court:

1 The appellants/ original plaintiffs have filed this Second Appeal aggrieved by the judgment and decree dated 19.06.2019 passed by the learned Principal District Judge, Parbhani in Regular Civil Appeal No.113/2013 thereby, setting aside the decree passed by the learned Joint Civil Judge, Junior Division, Purna on 20.07.2013 in Regular Civil Suit No.106/2009 issuing perpetual injunction against the respondents/ defendants.

2 Shri Shelke, learned counsel appearing for the appellants, submitted that the appellants/ plaintiffs filed the suit for declaration that the plaintiffs have become owners of the suit property by adverse possession and for perpetual injunction against the respondents/ original defendants. The case of the appellants before the Trial Court was that they

are in possession of the suit property since 1985. The Trial Court framed the issues i.e. whether, the plaintiffs have proved that they have become owners of the suit property by adverse possession, whether, the plaintiffs are entitled to the said declaration and whether, the plaintiffs are entitled to perpetual injunction as claimed. Issue Nos.1 and 2 were answered in the negative and Issue No.3 in respect of perpetual injunction was answered in favour of the appellants/ plaintiffs and thus, the Trial Court decreed the suit partly to the extent of the relief of perpetual injunction against the defendants. The appellants did not prefer the appeal aggrieved by the refusal of the relief of declaration by the Trial Court. But, the respondents/ defendants filed the appeal aggrieved by the decree passed by the Trial Court i.e. RCA No.113/2013 and the said appeal was allowed by the first Appellate Court by the impugned judgment and decree and the perpetual injunction granted in favour of the appellants was set aside and therefore, this Second Appeal.

3 Shri Shelke learned counsel submitted that the findings recorded by the Trial Court and the Appellate Court as regards the appellants' possession over the suit property are different and contrary as the Trial Court held that the appellants have proved their possession over the suit property and the Appellate Court has held that the appellants have failed to prove their settled possession over the suit property. It is submitted that the suit property is Gairan land and the concerned Gram

Panchayat had passed the necessary resolution in August, 2018 and confirmed the possession of the appellants over the suit property. Therefore, according to the learned counsel, when the appellants have proved their possession over the suit property for more than 24 years and the Trial Court found that the defendants are not owners of the suit property, the Trial Court rightly issued the perpetual injunction against the defendants. But, the Appellate Court, without framing proper points and without assigning proper reasons, set aside the findings recorded by the Trial Court. Therefore, according to the learned counsel, the Ground Nos.II, III, V, VII, XI, XII and XIV involve substantial questions of law to be considered by this Court in this Second Appeal by admitting the same.

4 I have carefully considered the submissions made by the learned counsel for the appellants and perused the judgments of both the courts below. On perusal of the judgment of the Trial Court, it appears that the Trial Court, after finding that the appellants failed to prove the adverse possession over the suit property, held that they are not entitled to declaration that they have become owners of the suit property by way of adverse possession. As regards Issue No.3 about perpetual injunction, the Trial Court found that the plaintiffs are in possession of the suit property for more than 24 years and therefore, when the defendants are not owners, the appellants cannot be evicted from the suit property without following the due procedure of law and hence, the relief of

perpetual injunction was granted in their favour by the Trial Court.

5 It appears, on perusal of the judgment of the Appellate Court, that the Appellate Court has given more stress on the fact that the appellants have not given specific date as to when they were put in possession of the suit property and thus, concluded that they have failed to prove their settled possession over the suit property and not entitled to perpetual injunction and accordingly, set aside the findings in respect of the perpetual injunction recorded by the Trial Court. Thus, it appears that the findings of both the courts below in respect of the appellants' entitlement to perpetual injunction are contrary and different. Therefore, this Second Appeal needs to be admitted for substantial questions of law to be considered by this Court, which are formulated as follows :-

- (A) Whether, the Appellate Court was right in setting aside the finding of the Trial Court that the appellants/ plaintiffs are entitled to perpetual injunction against the respondents/ defendants when the appellants have proved their possession over the suit property and the defendants have admitted the appellants' possession over the suit property?
- (B) Whether, the judgment and decree passed by the Appellate Court reversing the decree for perpetual injunction passed in favour of the appellants, needs interference by this Court?
- (C) Whether, the Appellate Court erroneously misconstrued and

misinterpreted the resolution dated 15.08.2008 passed by the Village Panchayat at Exhibit 78 as regards allotment of premises to the appellants?

- (D) Whether, the Appellate Court could read in evidence and rely upon the evidence of Cadestral Surveyor at Exhibit 92 to hold that the appellants have encroached over the internal road of the Agricultural Market Produce Committee and Highway No.44 when the measurement of area of highway was not the subject matter of measurement and the map at Exhibit 93 has not been proved in accordance with law and the area of encroachment by the appellants has not been specified and shown in the said map?
- (E) Whether, the claim of the respondent/ APMC as regards the encroachment of appellants over their property is sustainable in the light of recovery of N.A. Tax by the State Authorities?

6 ADMIT.

7 Issue notice to the respondents returnable on 25.02.2020.

3 Call for the record and proceedings from the concerned Court.

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

CIVIL APPLICATION NO.422 OF 2020

IN

SECOND APPEAL NO.13 OF 2020

BAPURAO KERBA DESHMUKH AND OTHERS

VERSUS

AGRICULTURAL PRODUCES MARKET COMMITTEE, TADKALAS THRO.
PRESIDENT AND OTHERS

...

Advocate for the Applicants : Shri Shelke Shivaji T.

...

CORAM: S. M. GAVHANE, J.

DATE :- 15th January, 2020

Per Court:

1 The applicants/ original plaintiffs have filed this Civil Application praying to stay the judgment and decree dated 19.06.2019 passed by the learned Principal District Judge, Parbhani in Regular Civil Appeal No.113/2013, during the pendency of the Second Appeal filed by them aggrieved by the said judgment and decree.

2 Shri Shelke, learned counsel appearing for the applicants, submitted that on the basis of the order passed by the Appellate Court, the respondents have issued the notice on 09.01.2020 to the applicants and he has invited my attention to one of such notice issued to Shaikh Rasheed Shaikh Ayub (applicant No.10) and submitted that the respondents are

likely to disturb the applicants' possession over the suit property. By the said notice, the applicants are directed to remove the structures over the suit property and therefore, the execution and operation of the judgment and order passed by the Appellate Court may be stayed as the Second Appeal is admitted by this Court.

3 Considering the submissions made by the learned counsel for the applicants and the fact that today the Second Appeal is admitted for the substantial questions of law to be considered by this Court recorded in the said order, the execution and operation of the judgment and decree dated 19.06.2019 passed by the learned Principal District Judge, Parbhani in Regular Civil Appeal No.113/2013 is stayed, pending the hearing and decision in the Second Appeal filed by the applicants. Application is, accordingly, disposed of.