

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 856 OF 2019
WITH
CIVIL APPLICATION NO. 883 OF 2019
IN
SECOND APPEAL NO. 856 OF 2019**

Sayaji Pandurang Dabade and Anr. ... Applicants/Appellants
V/s.

Tukaram Nana Dabade and Anr. ... Respondents

Mr. Ganesh S. Patil for the applicants/appellants.

Mr. Chetan Gajanan Patil for the respondent no.1.

Mr. Pravin Maruti Dabade for the respondent no.2.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 3rd JANUARY 2020.

P.C. :

. Heard the respective parties.

2. The appellant herein impugns the judgment and order passed by the District Judge-1, Vaduj in Regular Civil Appeal No. 26 of 2011 dated 14th March 2019, thereby, upholding the judgment and order passed by Civil Judge Junior Division, Vaduj in Regular Civil Suit No. 202 of 1996 dated 31st January 2011.

3. The present respondent happens to be the original plaintiff who had filed a suit for declaration, that the suit property bearing City Survey No. 240 situated at Mauje Kaledhon is owned by the plaintiff

and for permanent injunction to restrain the defendant from disturbing the peaceful possession of the plaintiff. According to the original plaintiff CTS No. 240 happens to be his ancestral property and that Sanad was issued in his favour in the year 1982 and that he continued to be in peaceful possession, till there was an encroachment by the defendants. It is the case of the defendants that they were inducted as tenants of the said suit property, by the Grampanchyat. The defendants had placed implicit reliance upon the Rent Agreement dated 9th September 1996, the Resolution for which was passed by the Grampanchyat on 17th October 1996.

4. The learned counsel for the defendants has submitted that the Sanad which was issued in favour of the plaintiff in the year 1982 was not challenged by the present appellant or the Grampanchyat. It is true that the said Sanad was not challenged by the Grampanchyat. The learned counsel for the appellant submits that it was challenged in the year 2010 before the Revenue Commissioner, Pune i.e. during the pendency of the suit.

5. It is pertinent to note that the suit was filed in the year 1996 and the date of the judgment is 31st January 2011. It is further pertinent to note that the Commissioner has also rejected the challenge to the said Sanad. The Civil Judge Junior Division, Vaduj had framed the issues on the basis of the pleadings of both the parties. It was declared that the plaintiff was the owner of the said suit property and the defendant no. 1 was directed to demolish the construction made by him in the suit property admeasuring area of 15x20 sq.ft. At this stage,

it is relevant to note that the said judgment was not challenged by the Grampanchyat and that as far as the title of the Grampanchyat is concerned, they had accepted the judgment passed by the Civil Judge Junior Division, Vaduj. The very fact, that the resolution to induct the appellant as a tenant is subsequent to the rent agreement, would speak volumes for itself. Moreover, the suit property was not mentioned in the rent agreement. The plaintiff had placed on record the Sanad at 'Exhibit-7' and the property card at 'Exhibit-8' by which the entry of the plaintiff was confirmed.

6. Moreover, the map was also attached to the Sanad indicating the boundaries of the suit property. The city survey record as far as City Survey no. 240 is concerned was also recorded in the name of the plaintiff. Moreover, it was the contention of the defendants in their written statement that he constructed property in City Survey No. 239 and not in City Survey No. 240. The learned Court has rightly held that no submission beyond the pleadings of the parties can be taken into consideration.

7. Taking into consideration, the justifiable reasons assigned by both the Courts below and the findings recorded by both the courts on the basis of the documents, pleadings and submissions of the party does not call for any interference. Hence, the second appeal being devoid of any merits stands dismissed. In view of this, Civil Application is also disposed of.

8. Needless to mention that the interim relief granted vide order dated 11th July 2019 also stands vacated.

9. The learned counsel for the appellant seeks eight weeks time to demolish the said construction. Time as prayed for is granted. It is also made clear that the said period will not be extended.

(SMT. SADHANA S. JADHAV, J)