

Wakodikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 706 OF 2014

Dorabjee Estate Co-operative Housing
Society Ltd.

..Appellant.

V/s.

Union of India and Anr.

..Respondents.

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Mr. Y.S.Jahagirdar, Senior Advocate i/b.Mr. S.C.Wakankar for the
Appellant.

Mr. Y.R.Mishra a/w Ms. Jyotsna Pandhi for Respondent No.2/Union of
India.

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CORAM: NITIN W. SAMBRE, J.

DATE : 20th JANUARY, 2020

P.C.:-

Present Appellant claimed to be holder of a lease hold
rights of suit property vide lease deed dated 15th December, 2003 –
Exh.106. The Appellant claims that the original owner namely Nafisabi
S. Sabir has executed a registered lease deed of the following property
in his favour.

Description of demised portion of land -

A portion admeasuring 4 Hectares and 46 Acres i.e.
10 and ½ Acres and 26 Gunthas bearing S.No.594
(Part) situated at Munjeri, Kondhwa Road, Near
Sahney Sujan Park, within the limits of Pune

Municipal Corporation, Taluka Pune City, District Pune being part of the property more particularly described in schedule I hereinabove and which portion is bounded as under :

On or Towards The :

North : By Cantonment Boundary

South : By Survey No. 592

East : By Kondhwa Road

West : By Survey No.594 (Part).

2. Based on the aforesaid lease deed, Appellant/Plaintiff initiated Regular Civil Suit No.1639 of 2004 on the file of Joint Civil Judge, Senior Division, Pune for simplicitor injunction based on title. The lease deed – Exh.106 claimed to have granted permanent lease in favour of Appellant/Plaintiff and it is claimed that since the Respondent/Defendant obstructed their possession, peaceful enjoyment, a prayer for perpetual injunction was made.

3. Resisting the claim, though the Defendant/Respondent has not filed any written statement, however, Defendant No.2 – Ministry of Defence resisted the suit vide written statement – Exh.17. In support of the suit claim, the Appellant/Plaintiff examined Ali Asgar Dekhani at Exh.48, Jahangir Nariman Dorabjee at Exh.64. The certified copies of the award statements (Exh.93 and 94), certified copy of Kami-Jast Patrak (Exh.95) and other relevant documents such as tax receipt showing certificate, demarcation map, lease deed etc.

4. The Respondent/Defendant relied on award statement No.8 and 11 (Exh.120 & 121), the possession receipt dated 8th December, 1994 (Exh.122), certified copy of the possession receipt dated October 6, 1994 (Exh.123), Kami-Jast Patrak (Exh.124).

5. Considering rival claims, issues were framed at Exh.36 as to the lawful possession of the Appellant/Plaintiff over the suit property which was answered in favour of the Appellant/Plaintiff. The Trial Court, as such, has proceeded to grant injunction thereby restraining Defendant perpetually from disturbing peaceful possession over the suit property.

6. The order of grant of injunction is based on the findings recorded by the Trial Court as regards the appreciation of the evidence of Defendant's witnesses, and the fact that the area to the extent of 16 Acres 26 Gunthas remained after acquisition, the Trial Court then proceeded to notice that the lawful possession was never vested in the Respondent from the predecessor in title of the Appellant and as such decreed the suit.

7. The Respondent/Defendant, feeling aggrieved, preferred an appeal being Civil Appeal No.906 of 2012 before the Learned District Judge, Pune, which came to be allowed vide impugned judgment and order dated 2nd May, 2014 whereby the judgment delivered by the Trial Court decreeing the suit came to be set aside and the suit of the Appellant/Plaintiff came to be dismissed. Hence, this second appeal.

8. Shri. Jahagirdar, Senior Counsel for the Appellant/original Plaintiff would try to pursue this Court to frame the following question of law;

“whether the lower Appellate Court has committed an error on the face of record in recording finding of vesting of the title and possession in favour of the Respondent, particularly when admittedly, the possession receipt was not signed by the appellant ?”

9. The Learned Senior Counsel would take me through the nature of evidence which has been appreciated by the Appellate Court. According to him, even if, possession receipt is signed by the Respondent and that of by the Land Acquisition Authority, that by itself cannot be termed as a lawful possession. According to him, merely passing of an award and receipt of payment of compensation to the land owner by itself not suffice to infer that the lawful title and

possession stood vested in the Respondent Authorities. He would try to rely on the documentary evidence so as to substantiate his claim.

10. While countering the same, the Learned Counsel for Respondent would urge that the Trial Court has ignored the map which was produced by the Respondent/Defendant, which was prior to 1955 i.e. after the acquisition proceedings were completed. According to the Counsel for Respondent, this Court is required to consider the provisions of Evidence Act while appreciating the evidence in relation to the old documents which were produced by the Respondent/Defendant. As such, it is prayed that the second appeal be dismissed.

11. Considered submissions.

12. The case of the Plaintiff/Appellant is land survey No.594 was owned by Nafisabi, who by virtue of an award became owner of the suit property. The original owner of the suit property was one Ibrahim, after whose death the inflating between the legal heirs has resulted into an appointment of an Arbitrator on an award. The award speaks of the amount of compensation of land survey No.594 was paid to Nafisabi and since the Appellant themselves are relying on this award, it can be inferred that the Appellate Court was right in concluding that the

theory of the award under Land Acquisition Act was admitted by the Appellant. Said Nafisabi is not examined as a witness by the Appellant, but Appellant has examined Jahagir Nariman Dorabji, who, in his cross-examination considered that the award relied on for establishing title of land survey No.594, does not mention or relates to said property.

13. As far as survey No.594 is concerned, a compensation of Rs.782/- was paid to Nafisabi after acquiring 8 Acres which was numbered as 594/1. Award to that effect being Award No. 2/1937-38 at Exh.94 justifies the stand of Respondent/Defendant.

14. Award statement No.11/1934-35 speaks of acquisition of 1 Acre 15 Gunthas out of Survey No.594/2 which was passed on 11th January, 1934 (Exh.120), the said award was in favour of guardian of minor Nafisabi.

15. An award for area of 15 Acre 11 Gunthas being award statement No.8/1934-35 at Exh.121 out of Survey No.594, Hissa No.1 establishes about the acquisition of the said property. All these awards are neither subject matter of challenge at the behest of Appellant/Plaintiff nor such acquisition is disputed. As such, it could be inferred from the aforesaid statements of Award which were part of the

record of the case in hand that the land survey No.594 was acquired way back i.e. from 1934-35 to 1937-38.

16. The Appellate Court considered total acquisition as referred above from the three awards to the tune of 24 Acre 26 Gunthas and the survey No.594 consisting of 26.26 Gunthas further went on clarifying the same based on the documentary evidence.

17. It is also not disputed that the compensation was received by the Nafisabi i.e. predecessor in title of the appellant.

18. The possession of the Respondent/Defendant was established from Exh.122 and 123. Pursuant to the award under Section 11 of the Land Acquisition Act, the Land Acquisition Officer handed over the possession of suit property to the Respondent pursuant to the provisions of Section 16 of the Act. The Fact that their existing award, way back from 1934 till 1939, the maps drawn in 1935 i.e. on 30th April, 1935, the possession receipts (Exh.122 and 123) in categorical terms establishes the case of Respondent/Defendant and the Appellant/Plaintiff has failed to establish its lawful possession over the suit property.

19. In the aforesaid background, the question of law as is sought to be agitated by the appellant does not appear to be of any substance and that being so, there is no merit in the present second appeal. As such, same is dismissed.

(NITIN W. SAMBRE, J.)