

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 2 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 3 OF 2016**

Dhondiram Suka Rehare
(since deceased) thru' LRs
Eknath Dhondiram Rehare & Ors. Appellants
(Ori. Plaintiffs)

Vs.

Late Kacharu Bhau Raut
(since deceased) thru'
sons Vijay Kacharu Raut & Os. Respondents
(Ori. Defendants)

Mr. Sachin Gite for Appellants
Mr. S.S. Kanetkar for Respondent No.1

**Coram : NITIN W. SAMBRE, J.
Date : 13th January, 2020**

P.C.:

1. This Second Appeal is by the appellants/original Plaintiffs under Section 100 Code of Civil Procedure questioning the judgment and decree passed in Regular Civil Suit No.1 of 2006 on 25th January, 2010, which was confirming Civil Appeal No. 47 of 2010 passed by the District Judge-7 and Additional Sessions Judge, Nashik, on 27th July, 2015.

2. The facts necessary for deciding the Second Appeal are as under :

Based on the title, the appellant-plaintiff filed a suit for injunction, whereas the respondent/defendant claimed injunction based on his status as the possessor of the property in question.

3. The claim of the appellant is, by virtue of revenue entries, the possession of the suit property, which is an agricultural land stood restored to the appellant on 11th August, 1967 and as such by virtue of Panchanama, Exhibit 26, the appellant-plaintiffs are in settled possession of the suit property. It is claimed that the erstwhile land owner executed a registered sale-deed in favour of the present appellant on 24th May, 1965 i.e. Exhibit 59 and that being so, the appellant-plaintiff is in lawful possession and has legal right to the property in question.

4. In defence, the present respondent through written statement at Exhibit 16 claimed that the property remained in possession of the respondent-defendant since prior to 1950. So as to

substantiate the said claim, reliance is placed on mutation entry. It is clarified that after the aforesaid dispossession, the possession of the land stood restored in favour of the respondent by virtue of order dated 8th April, 1975 in Revenue Case No.4 of 1975 on 13th May, 1976. The mutation entry No. 62 was accordingly carried out and as such from 1971 to 1976, the respondent-defendant is in consistent possession of the suit property.

5. In the aforesaid background, the questions of law, which are agitated by Mr. Gite in support of the Second Appeal as sought to be framed as under :

Whether the appellant was in settled possession of the suit property based on the order of Revenue Authority?

Whether the respondent-defendants are in settled lawful possession of the suit property?

6. If the above referred question of law, which is sought to be framed is appreciated, both the Courts below have concurrently held that the predecessor-in-title of the appellant namely Kantilal Hemraj

Marwadi was put in possession of the suit property on 11th August, 1967 vide Panchanama Exhibit 26 in an order of possession passed in Tenancy Case No. 7 of 1958.

7. In the aforesaid background, the appellant claimed to have continued in possession of the suit property by virtue of sale-deed dated 24th May, 1965 i.e. Exhibit 59. It is claimed by the appellant that since the date of execution of sale-deed and re-possession of the land in tenancy proceedings, the appellant continued to be in lawful possession.

8. From the evidence of the respondent/defendant, it was established that mutation entry No. 62, Exhibit 81 was incorporated in favour of the defendant after removal of the name of the appellant herein. The dis-possession of predecessor-in-title by virtue of order dated 8th April, 1975 passed in Revenue Appeal No. 4 of 1974 on 13th May, 1976 establishes lawful possession of the respondent-defendant.

9. The suit property thereafter consistently remained in favour of the respondent-defendant as could be inferred from the revenue record i.e. 7/12 extracts of 1971 till 2006.

10. The cause of action as narrated by the appellant in his plaint, if appreciated, the mutation entry No. 62 is sought to be questioned after a period of about 36 years in the plaint, which claim is statutorily barred.

11. In the aforesaid background, both the Courts below have concurrently held that the appellant has failed to establish his lawful possession over the property in question and as such refused injunction.

12. In the aforesaid background, no case for interference against the concurrent findings is made out.

13. The appeal fails. Dismissed.

14. In view of dismissal of Second Appeal, the Civil Application No. 3 of 2016 does not survive. The same is accordingly disposed of.

(NITIN W. SAMBRE, J.)