

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO.378 OF 2018
WITH
CIVIL APPLICATION NO.6829 OF 2018
IN SA/378/2018**

CHATARU NATHA KHANDAGLE
VERSUS
BHAGUBAI BHAURAO BHANDRE AND OTHERS

.....
Advocate for Appellant/Applicant : Mr. N. S. Jaju
Advocate for Respondent : Mr. Y. V. Kakade
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-09-2021

ORDER :

1. Present appeal has been filed by the original plaintiff challenging the Judgment and decree passed in Regular Civil Appeal No.66 of 2014, by learned District Judge-13, Ahmednagar, on 11-10-2017, thereby allowing the appeal filed by the present respondent and thereby setting aside the Judgment and decree passed in Regular Civil Suit No.186 of 2011 by learned Civil Judge, Junior Division, Shevgaon, dated 27-01-2014 whereby suit filed by the present appellant for perpetual injunction was decreed.
2. Heard learned Advocate Mr. N. S. Jaju for appellant and learned Advocate Mr. Y. V. Kakade for respondents No.1 to 4. In order to cut

short, it is stated that both of them have made submissions in support of their respective contentions.

3. At the outset, as aforesaid the plaintiff had filed the said suit for perpetual injunction. It was contended in the plaint that initially one Maruti Kisan was the owner of suit property i.e. agricultural land bearing Gut No.178 admeasuring Western side 2 H 60 R situated at village Kolgaon Tq. Shevgaon Dist. Ahmednagar. Maruti died in the year 1982 leaving behind son Rambhau. Rambhau also died 20 years prior to the suit. Defendant No.5 Sitabai is the widow of Rambhau. Santosh and Ravi are the sons of Rambhau. Bhagubai, Yashoda and Laxmibai were the sisters of Rambhau. Out of them Laxmibai has expired. It was stated that Maruti was the relative of the defendants. In fact, about 40 years prior to the suit, Maruti had left Kolgaon along with his relatives. He used to work at Nashik as well as Rahuri. Even his son Rambhau did not return to village during his lifetime. Plaintiff contended that he is the owner of Gut No.201 adjacent to the suit property. Since Maruti had left the village, the plaintiff started cultivating the said land and since last 40 years he is cultivating it without any interruption even by the legal representatives of Maruti. According to the plaintiff, defendants

have no concern with the suit property. Plaintiff says that he met with defendants in Tahsil Office, Shevgaon on 01-06-2011 and came to know about the intention of the defendants to sell out the property. According to the plaintiff, he tried to convince defendants not to sell the property, however, defendants were not in mood to listen and, therefore, he filed the suit.

4. Defendants appeared and denied all the contents of the plaint and even the description of the property was challenged. It was stated that the suit property was class-II occupancy land. After death of Maruti, name of his legal representatives came to be recorded in 7/12 extract and then they were cultivating the said land. It was their contention that they were getting it cultivated through somebody. When they are the owners and possessors of the property, they cannot be injuncted.

5. As aforesaid, the suit came to be decreed, however, in the appeal the said decree is reversed. Hence, this second appeal.

6. Plaintiff has not claimed that he is the owner of the suit property. It is not his case nor a declaration was sought by him that he has become owner by adverse possession. It appears from the

record that the plaintiff has not given the nature of his alleged possession over the suit property. At the cost of repetition, it can be said that plaintiff has not come with a case that he got the possession of the suit property unauthorisedly or illegally, yet since it continued for more than 12 years, he has now become the owner and, therefore, his possession needs to be protected. When he has not explained the nature of his possession, it cannot be said that his alleged possession is legal. The defendants had challenged the nature of the possession of the plaintiff over the suit property, so also they claimed the ownership. Under such circumstances, in view of the decision in *Anathula Sudhakar vs. P. Buchi Reddy (dead)* (2008) 4 SCC 594, which has been reiterated recently by Hon'ble Apex Court in *T. V. Ramakrishna Reddy vs. M. Mallappa*, reported in LL 2021 SC 423, a suit simpliciter for permanent injunction without claiming declaration of title is maintainable only in cases where the plaintiff's title is not in dispute or under a cloud.

7. Learned Advocate appearing for the appellant relied on *Rame Gowda (D) by L.Rs. vs. M. Varadappa Naidu (D) by L.Rs. and another*, reported in AIR 2004 Supreme Court 4609, wherein it has been held that, "a person in 'settled possession' needs to be

protected till proper procedure of law to evict him is adopted.” It is to be noted that the Trial Court in this case held that the plaintiff has proved that he is in settled possession of the suit property, however, it is to be noted that the First Appellate Court has taken the account of documentary as well as oral evidence and come to the conclusion that the plaintiff is not at all in possession. This Court cannot go much into the facts of the case unless it is shown that the assessment thereof by the Courts below is perverse. The First Appellate Court after taking oral evidence into account observed that the witnesses examined by the plaintiff are absolutely not reliable. He has observed that the witnesses avoided the answers to the questions put by learned Advocate for the defendants and most part of their deposition is recorded in question and answer form. Though P.W.2 Annasaheb supported the plaintiff in examination-in-chief, in the cross-examination he claimed ignorance about the ownership over the suit land. He went on to say that there are two plaintiffs to the case, however, there is only one plaintiff. It has been concluded that he has no knowledge about the facts of the case, yet he tried to oblige the plaintiff. The plaintiff's own testimony has also been discarded by the First Appellate Court. Thereafter, the First Appellate Court has taken note of the 7/12 extracts, Exhibits 5 and

27 produced by the plaintiff, however, it is noted by him that there is manipulation. It has been noted that the son of the plaintiff was serving as 'Kotwal' and it has been concluded on the basis of the evidence that with the help of the said son, the manipulation has been done in the revenue records. The parties have fought before the revenue authorities also in respect of the mutation entries. Ultimately, the decision by Sub-Divisional Officer had set aside the order of Tahsildar regarding dismissal of Kotwal who was the son of the plaintiff but had not set aside the order of Tahsildar by which on inquiry he had held that the name of plaintiff entered in cultivation column without any order or inquiry and there is no evidence regarding plaintiff's possession. Ultimately, the name of the plaintiff came to be deleted from the cultivation column. Admittedly, plaintiff's name never appeared in the ownership column of the 7/12 extract of the suit land. Therefore, on the basis of these entries, it was considered by the First Appellate Court that the plaintiff is not in "settled possession". Therefore, the ratio laid down in *Anathula Sudhakar vs. P. Buchi Reddy (dead)* (2008) 4 SCC 594 will not be applicable to the facts of the case. When it has been held that the plaintiff is not in possession, question of grant of injunction does not arise. The suit itself is not maintainable in view of the aforesaid

discussion on the basis of the decisions in *Anathula Sudhakar (Supra)* and *T. V. Ramakrishna Reddy vs. M. Mallappa (Supra)*.

8. No substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case requiring admission of the second appeal. Hence, the second appeal stands dismissed. Pending Civil application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-