

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.11 OF 2021 WITH
CIVIL APPLICATION NO.483 OF 2021 WITH
CIVIL APPLICATION NO.484 OF 2021

Murlidhar s/o Kisanrao Dongare
Since deceased, through his L.Rs.
Dattatraya s/o Murlidhar Dongare & ors. ... **APPELLANTS**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Shri Satyajeet S. Dixit, Advocate for appellants
Mrs. P.V. Diggikar, A.G.P. for State.
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 9th April, 2021

Date of pronouncing order : 6th May, 2021

ORDER :

The challenge in this Second Appeal is to the judgment and decree dated 25/7/2007, passed by the Court of Civil Judge, Senior Division, Sangamner in a suit, Regular Civil Suit No.220/2004 and confirmed by the judgment and decree dated 30/9/2019, passed by District Judge-2, Sangamner in Regular Civil Appeal No.101/2008. By the

impugned judgment and decree, the suit of the appellant/ plaintiff came to be dismissed. The original plaintiff passed away pending first appeal. The legal representatives of original plaintiff are, therefore, before this Court in Second Appeal.

2. Heard Mr. Dixit, learned counsel for the appellants.

The original plaintiff filed the suit for relief of declaration that he has become the owner of the agricultural land Gut No.25/3, admeasuring 3 Hectors 44 R, situated at village Rayate, Taluka Sangamner, District Ahmednagar (for short the suit land). The consequential relief of permanent injunction was also asked for so as to perpetually protect his possession over the suit land. It is the case of the appellants that the suit land belong to the State of Maharashtra (respondent/ defendant No.1). The respondents No.2 and 3 are the Sub-Divisional officer and Tahsildar of Sangamner respectively. Respondent No.4 is the Sarpanch of the village Rayate. It is also the case of the appellants that the suit land was granted to the original plaintiff on lease for one year in 1963. Since then he has been in possession of the suit land. By virtue of the provisions of the Maharashtra Land Revenue

Code, 1966 (MLRC), he became the owner of the suit land. The respondents No.1 to 3, however, shown the suit land to have been transferred to the defendant No.4. The plaintiff had moved number of applications to respondents No.1 to 3 for grant of the suit land, permanently.

3. Both the courts below gave a concurrent finding of fact, holding the plaintiff to have neither proved his title to the suit land nor possession thereon.

4. Shri S.S. Dixit, learned counsel for the appellants would submit that, the respondents No.1 to 3 did not file written statement. The averments in the plaint have as such not been disputed. The trial Court allowed the Advocate for the respondents No.1 to 3 to cross-examine the plaintiff. Whatever admission have come on record during cross-examination of the plaintiff, should not have been relied for want of factual foundation as no written statement was filed. The provisions of Sections 30 and 31 of the MLRC have not been properly interpreted. In the first appeal, a compromise was entered into between the appellant and the respondent No.4 to the extent of some portion of the suit land. The compromise pursis duly executed by the parties was produced

before the Court. The averments therein would undoubtedly indicate the plaintiff/ appellant to have been in possession of the suit land. The entries in the revenue record have presumptive value. Both the courts below have, however, ignored the revenue record of the suit land. In the first appeal, the respondent No.4 had filed an application for adducing additional evidence along with certain documents. Without giving any opportunity of hearing to the appellant the production of the documents came to be allowed. The first appellate Court relied on those documents and passed the impugned judgment. According to learned counsel, no proper issues have been framed. The documentary evidence has not been properly appreciated. According to learned counsel, substantial questions of law as stated hereinabove are involved in this appeal. He, therefore, urged for admission of the appeal.

5. The appellant/ plaintiff has to prove his own case. The plaintiff filed the suit with a strange prayer. He claimed the relief of declaration that he has become owner of the suit land by virtue of provisions of the MLRC. Admittedly, the suit land was Deshmukh Inam land. On abolition of the inam, the land resumed to the Government. As such, the State of

Maharashtra is the owner of the suit land. I have not come across any provision in the MLRC nor any such provision has been brought to the notice of this Court to suggest that by virtue of grant/ lease of the suit for a period of one year in 1963, the plaintiff has become owner of the suit land. Sections 30 and 31 of the Maharashtra Land Revenue Code read as follows :

30. Occupation of unalienated land granted under provisions of the Code :

Where any unoccupied land which has not been alienated, is granted to any person under any of the provisions of this Code, it shall be the duty of the Tahsildar without delay to call upon such person to enter upon the occupation of such land in accordance with the terms of the grant.

31. Unoccupied land may be granted on conditions :

It shall be lawful for the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as may be prescribed by such rules before land is entered upon under Section 30. The price (if any) paid for such land shall include the price of the Government right to trees thereon and shall be recoverable as an arrear of land revenue.

It is true that way back in 1963 the respondent

No.1 appears to have given the suit land to the plaintiff for cultivation for a period of one year. The entries in the revenue record of the relevant year supports the plaintiff's case. Since there being no provision in MLRC or in any other law conferring title to the agricultural land by virtue of grant of lease for a period of one year, both the Courts below have rightly non-suited the plaintiff as regards relief of declaration of title to the suit land. On this aspect, there could not be any substantial question of law to be involved in this Second Appeal.

6. So far as regards prayer for a decree of perpetual injunction is concerned, it is to be stated that, the appellants want to protect their alleged possession over the suit land perpetually on the basis of claim of ownership/ title to the suit land. Since the suit land belongs to the State of Maharashtra/ respondent No.1, and the plaintiff could not prove his claim to have perfected title to the suit land, the appellants are necessarily not entitled to protect their possession, if any, perpetually. It is not the case of the appellants that their alleged possession is being disturbed or they are likely to be evicted without following due process of law.

7. The plaintiff, in affidavit of evidence, claimed to have no any other land to earn their living. The plaintiff, however, in response to the questions put to him in cross-examination on behalf of the respondent No.4, has admitted that the suit land abuts/ adjoins his own land. In his examination-in-chief itself and even in plaint (observed by the trial Court), the plaintiff admitted that the respondent No.1 granted the suit land to the Village Panchayat. It is his case that he has, however, not lost his possession thereunder. The trial Court has also observed that, the plaintiff himself has admitted in the plaint that the Village Sarpanch (respondent No.4) granted him the suit land on lease for a period of one year in June 1981. By virtue of Section 51 of the Maharashtra Village Panchayats Act, the State Government may vest in any Panchayat open site, vacant or grazing lands etc. Section 55 of the Maharashtra Village Panchayats Act authorises the Panchayat to lease, sell or transfer property of Panchayat except the property vested with it by virtue of Section 51 of the said Act. When the suit land was admittedly granted to the Village Panchayat for extension of gaathan, the Sarpanch did not have any authority to give it to the plaintiff on lease for one year. The possession of the plaintiff over the suit land, if any, was, therefore, unauthorised. The respondents

have every authority to obtain possession by following due process of law.

8. True, the trial Court ought not to have allowed the learned A.G.P. representing the respondents No.1 to 3 to cross-examine the plaintiff on factual matrix since they have not filed written statement. The answers given by the plaintiff in the cross-examination, therefore, need to be ignored. Still, the appellants have no case for admission of this appeal.

9. In the first appeal, the appellants and the respondent No.4 filed a compromise pursis. The appellants are shown to have given some portion of the suit land to respondent No.4 for construction of water tank. According to learned counsel for the appellants, the averments in the compromise memo is a proof of the appellants' possession over the suit land. It has already been observed above that the appellants are not entitled to a decree for perpetual injunction so as to protect their possession, if any, over the suit land since they have failed to establish to have acquired title to the suit land.

10. So far as regards Civil Application for production

of additional evidence in the Second Appeal is concerned, the Civil Application needs to be rejected since the appeal is liable to be dismissed as no substantial question of law is involved therein.

11. For the aforesaid reasons, the Appeal is liable to be dismissed in limine. The Second Appeal is, therefore, dismissed. In view of dismissal of the Second Appeal, Civil Applications are also dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-