

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.762 OF 2012

GANGARAM S/O DASU GUNJAL
VERSUS
VISHWANATH ALIAS YUSU S/O MANKAJI CHIMANE

...
Mr. B. A. Darak, Advocate for the appellant.
Mr. Nitin Jagadale h/f Mr. V. D. Salunke for the respondent.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 03.08.2021

ORDER :-

. Present appeal is still pending for admission. Hence, heard learned Advocate Mr. B. A. Darak for the appellant and learned Advocate Mr. Nitin Jagadale holding for learned Advocate Mr. V. D. Salunke for the respondent. Perused the documents on record.

2. Apart from the judgments of both the Courts below and the pleadings and evidence that was led before the Trial Court, photocopy has been produced. Both the learned Advocates have made submissions in support of their respective contentions.

3. Present appellant is the original plaintiff, who had filed Regular Civil Suit No.47 of 2009 (Old Regular Civil Suit No.228 of 2005) before

Joint Civil Judge Junior Division, Ghansawangi. He contended that the Grampanchayat of village Tirthpuri, Tq. Ghansawangi, Dist. Jalna had allotted him East-West land admeasuring 82 feet and South-North 27 feet, however, according to him, the defendant has forcibly taken possession of western side 45 x 27 feet, which has been described by boundaries in his suit and, therefore, he is praying possession of that piece of land. The defendant had denied the claim of the plaintiff. Defendant had already filed Regular Civil Suit No.72 of 2000 against the plaintiff in which temporary injunction was granted against the present plaintiff, however, that suit came to be dismissed in default. According to him, the Grampanchayat had also allotted him the property about 15 years ago prior to the suit in which he had raised construction in stone and mud as well as three sheds made up in tin. That structure was given number as old House No.1364/1 and the new number is Grampanchayat House No.165.

4. After issues were framed, parties have led oral as well as documentary evidence. The learned Trial Judge has held that plaintiff has failed to prove that the suit plot was given by the Grampanchayat to him in the year 1990 and since then he was in possession of the suit land till 2000. It is held that plaintiff has failed to prove that the defendant had dispossessed him by taking advantage of ad-interim

injunction passed in Regular Civil Suit No.72 of 2000. The suit came to be dismissed on 04.10.2010. The present appellant – plaintiff preferred Regular Civil Appeal No.204 of 2010 before the learned Principal District Judge, Jalna and the said appeal came to be dismissed on 15.03.2012. Hence, present second appeal.

5. Important point to be noted is that though the plaintiff had contended that Grampanchayat had allotted him East-West 84 ft. x South-North 27 ft. land in the year 1990, in his cross examination, he has admitted that he has not produced any documentary evidence to prove the said fact. He could have definitely examined the Grampanchayat official and could have definitely produced the Grampanchayat record to show that such property was allotted to him. The documentary evidence which he has produced is 8A extract of Grampanchayat Tax Register for the year 2001-2002 at Exhibit-23. The Grampanchayat House No.166 stands in the name of plaintiff, however, it admeasures only 1029 sq. fts. There is no record produced by the plaintiff regarding his allotment in the year 1990 and since 1990 there is 8A extract in his name showing the allotment of the land claimed by him. Under such circumstance, both the Courts below have come to correct conclusion on the basis of the evidence adduced by them. No substantial questions of law as contemplated under Section 100 of the

Code of Civil Procedure is arising in this case and, therefore, at the threshold, second appeal deserves to be dismissed.

6. Accordingly, second appeal is dismissed. No order as to costs.

[SMT. VIBHA KANKANWADI, J.]

scm