

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 80 OF 2020

1] Smt. Tarabai Bhaurao Waghmode,
Age : 43 years, Occu : Agriculture & Household

2] Shri. Mahadev Bhaguji Waghmode,
Age : 68 years, Occu : Agriculture

3] Shri. Murlidhar Bhaguji Waghmode,
Age : 45 years, Occu : Agriculture

All R/o. Pachunda, Tq. Newasa,
Dist. Ahmednagar

.. Appellants
(Orig. Def. No. 2 to 4)

Versus

Sopandev Bapuji Waghmode
(since deceased through his legal heirs)
and others

.. Respondents

...
Mr. H.D. Deshmukh, Advocate for the appellants

...

CORAM : ANIL S. KILOR, J.
DATE : 22-03-2021

ORDER :

1. The challenge is raised in this Appeal to the Judgment and Decree passed by the District Judge-1, Newasa, District – Ahmednagar in RCA/195/2014 upholding the Judgment and Decree passed by the learned Joint Civil Judge Junior Division, Newasa in RCS/293/2004, decreeing the Suit for permanent injunction and thereby restraining the defendants from causing

obstruction to the plaintiffs in possession of the suit land through themselves or anybody else on their behalf without following due procedure of law.

2. I have heard learned counsel for the appellants.

3. The brief facts of the present case are that the plaintiffs filed suit for permanent injunction and it is the case of the plaintiffs that plaintiffs no. 2 and 3 are real brothers and plaintiff no. 1 was their father. Their family comprises a joint Hindu family. Plaintiff no. 1 was the karta and manager of the plaintiffs' joint Hindu family. Defendant no. 1 is the step-brother of plaintiff no. 1. Defendant no. 5 is the wife of defendant no. 1. Defendants no. 2 and 3 are their sons. Defendant no. 4 is the wife of deceased son of defendants no. 1 and 5. Defendant no. 6 is the husband of defendant no. 7. Defendant no. 7 is daughter of defendants no. 1 and 5. Family of defendants no. 1 to 5 is a joint family.

4. According to the plaintiffs, the suit land is an ancestral property of plaintiffs' family. Plaintiff no. 1 and his mother filed a suit against defendant no. 1 and got possession of suit land in execution proceedings bearing no. Regular Darkhast no. 124 of 1985 on 22-01-1993. The defendants have no concern with the suit land and plaintiffs were cultivating the suit land jointly. On 14-03-2004, the mother of the plaintiff no. 1 - Gangubai died and as per her last will, she bequeathed her half share in favour of the plaintiffs no. 2 and 3. Accordingly, mutation entry no. 1909 was entered in name of the plaintiffs no. 2 and 3. It is further the case of the plaintiffs that when the plaintiffs went into the suit land on 9-10-2004, the defendants threatened the plaintiffs to kill

and to obtain forcible possession of the suit land. Therefore, suit was filed for injunction.

5. The Learned trial Court after scrutinizing the oral as well as documentary evidence produced by both the parties, and after considering the relevant law, has held that the plaintiffs are in lawful possession of the suit property and the defendants caused obstruction to their possession. It is further held that the plaintiffs, therefore, are entitled for perpetual injunction. The learned trial Court at the same time negated the case of the defendants of adverse possession. The suit was accordingly decreed in favour of the plaintiff vide Judgment and Decree dated 20-08-2011.

6. The defendants feeling aggrieved by said Judgment and Decree, preferred Appeal before the District Judge – 1, Newasa vide Regular Civil Appeal no. 195 of 2014 which came to be dismissed by upholding the findings recorded by the learned trial Court in respect of nature of suit property, the entitlement of the plaintiffs and the possession of the plaintiffs, which is assailed in the present Appeal.

7. Learned counsel for the appellant submits that the findings in respect of possession has been given by both the Courts below on the basis of de-facto and not de-jure and, therefore, it cannot be said that plaintiffs are in possession and in absence of possession of the plaintiffs, grant of perpetual injunction in favour of the plaintiffs is not tenable and sustainable in the eyes of law.

8. To consider the contention raised by the appellant, I have gone through the record and perused the Judgment of both the Courts below.

9. Both the Courts below have considered the oral as well as documentary evidence and after scrutinizing the same, has given a finding in favour of the plaintiffs that they are in possession of the suit property and they obtained the possession in Darkhast proceedings. It is further held that the defendants preferred RCA/345/1982 against the decree passed in RCS/314/1997 in favour of Gangubai and plaintiff no. 1 which came to be dismissed on merits. The defendants thereafter did not challenge the decree passed in RCA/345/1982 preferred by them and as, such, the decree passed in RCS/314/1997 attained its finality.

10. Both the Courts have observed that since 1994 continuously, the mutation entries are in the name of plaintiffs and mutation entries were never challenged by the defendants though it was within their knowledge. Thus, on the basis of the material evidence available on record, as regards the possession of the suit property, both the Courts have concurrently held in favour of the plaintiff as regards their possession.

11. In that view of the matter, the judgment in the case of *Fabrica da Igreja de N.S. de Milagres V. Union of India and others*¹ relied upon by learned counsel for the appellant to substantiate that the revenue entries cannot be relied upon, cannot be of any use to the appellant in view of the fact

¹ 1995 (1) Bom.C.R. 588

that the said judgment is distinguishable on the facts. In the circumstances, the said judgment is not applicable to the present case.

12. As both the Courts as regards possession held concurrently against the appellant, and since appellant failed to point out any perversity in the said findings, I do not find any substantial question of law involved in the present Appeal. Accordingly, the Appeal is dismissed. No order as to costs.

[ANIL S. KILOR]
JUDGE

arp/