

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.496 OF 2019
WITH CA/11882/2019 IN SA/496/2019**

**NAMDEO KISAN MORE AND ANOTHER
VERSUS
RAJENDRA KISAN MORE**

Ms. C. S. Deshmukh, Advocate for the appellants

**CORAM : R. M. JOSHI, J.
DATE : 24th APRIL, 2023**

P.C. :-

1. This appeal is against concurrent judgments of Trial Court and First Appellate Court whereby the suit for injunction is decreed.

2. Brief facts leading to filing of this appeal are as under:

. Plaintiff initially filed suit with averment that there was partition between him and defendants prior to 14-15 years of the suit and subsequently amendment was carried out to the plaint whereby it was incorporated that the suit property was purchased by their mother Satyabhamabai. It is also claimed that Satyabhamabai by effecting a partition deed of the property has given 71 R land out of Gat No. 348 and the remaining 10 R land it was given to defendant No.1. It is further averred that their names are accordingly mutated to suit land. It is

further stated that defendant No.1 has constructed house on 2 R land and is in possession of remaining 8 R land. It is also claimed that plaintiff is in possession of 71 R land and that defendants are interfering in his possession over the same.

3. Defendants opposed contentions of plaintiff by filing written statement. It is claimed that plaintiff is allotted 41 R land whereas defendant No.1 got 40 R land by way of family arrangement. Actual exclusive possession over respective lands is also denied. Partition deed executed by Satyabhamabai is denied.

4. Learned counsel for defendants argued that the initial plea of the plaintiff was of partition, which suggests that the suit property was also joint family property and therefore in findings recorded by both Courts below about the property being owned by Satyabhamabai is not correct. It is also argued that there is no document in the form of partition deed being placed on record and in absence of such document whether it was open for the Courts below to hold that plaintiff has acquired any right into the said property would be the substantial question of law.

5. The suit is brought by the plaintiff against defendant No.1,

brother and his wife for seeking injunction against them from interfering into 71 R land from Gat No. 348. It is claimed that the said land was purchased by mother Satyabhamabai. The defendant No.1 in his written statement does not claim that the property does not belong to Satyabhamabai and that it is a joint family property or that he has contributed in the purchase of the same. Evidence however was sought to be laid by examining Baban who claims that a sum of Rs.8,000/- was paid by defendant No.1 at time purchase of suit property. In order to consider the said evidence at first instance there ought to have been pleadings in the written statement to that effect. It is settled law that, any amount of evidence sans pleadings is inconsequential and deserves to be ignored. Thus, evidence led by defendants cannot be considered for the purpose of proving case that Satyabhamabai was not exclusive owner of Gat No. 348. Thus, there is no escape from the findings that Satyabhamabai is the exclusive owner of the suit property and that she was within her right to dispose of the same as per her own wish.

6. Pertinently, Satyabhamabai entered into witness box and on oath has stated about she having given 71 R land to plaintiff and putting him in possession thereof. There could not be any better evidence than a statement of the owner on oath with regard to giving share in the Gut No. 348 to the plaintiff to the extent of the 71 R land. The plaintiff

therefore has proved his possession over 71 R land out of Gut No. 348. The fact of resistance of the suit by defendants itself is sufficient to issue injunction against them. Resultantly injunction granted by Trial Court which is confirmed by the First Appellate Court need not be interfered with.

7. In view of above discussion this Court find no substantial question of law involved in this appeal. Hence appeal stands dismissed.

8. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp