

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.783 OF 2022

- 1) Fulsing @ Fulchand s/o Somla Rathod,
Age 63 years, Occupation Agriculture,
- 2) Marotiram s/o Somla Rathod,
(Died through the LRs.)
- 2/1) Ramanbai w/o Somla Rathod,
Age 63 years, Occupation Household,
- 2/2) Rahul s/o Marotiram Rathod,
Age 26 years, Occupation Agriculture,
- 3) Waman s/o Amruta Ade,
Age 49 years, Occupation Agriculture,
- 4) Sitaram s/o Somala Rathod,
Age 64 years, Occupation Agriculture,
- 5) Digamber s/o Somala Rathod,
Age 54 years, Occupation Agriculture,
- 6) Hariba s/o Somala Rathod,
Age 66 years, Occupation Agriculture,
- 7) Vithal s/o Rupsing Rathod,
Age 59 years, Occupation Agriculture,
- 8) Sangita w/o Vishwanath Rathod,
Age 44 years, Occupation Household,

All R/o Hake Tanda-Renapur,
Tq. Renapur Dist. Latur.

...Appellants.

VERSUS

Ranganath s/o Vishwanath Katale,
Age 74 years, Occupation Business,
R/o Renapur, Tq. Renapur, Dist.Latur. **...Respondent**

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Advocate For Appellants:Mr. Sandip C. Swami Chakurkar
Advocate for Respondent : Mr. B. B. Bhise.

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CORAM : ARUN R. PEDNEKER, J.
DATE : 15th June, 2023

JUDGMENT :

1. By the present second appeal, the appellants are challenging the Judgment of the Trial Court whereby the Appellate court has dismissed the appeal filed by the appellants and confirmed the Judgment of the Trial Court decreeing the suit of recovery of possession of 40 R land from Gut No.632 of village Renapur, District Latur.

2. In brief the facts leading to the filing of the present second appeal can be summarized as under :-

The original plaintiff had filed Regular Civil Suit No.59 of 2023 for recovery of possession of 40 R land out of Gut No.632 as described in the plaint. The plaintiff's father late Vishwanath Katale was the owner and possessor of land in old Survey No.273/4 which was converted in the Gut No.632 in the consolidation scheme

admeasuring 5 H 25 R situated at Renapur, District Latur. The appellants father being the Karta of the family sold 1 H 21 R land to Mr. Dadarao Hanmantrao Patil and 1 H 21 R to Mukund Shamrao Gangthade by separate registered sale deeds. Thereafter, from the remaining 2 H 83 R land, the plaintiff's father sold 1 H 42 R land to defendant no.1 and Mr. Dasu Mohan Chavhan. The plaintiff's father was thus left with possession of 40 R of land on the Western side of the defendant No.1 and Dasu Mohan Chavan.

3. It is the case of the plaintiff that after executing various sale deeds, he was left in possession of 40 R of land from his original holding of 5 H 21 R. The name of father of the appellants was also recorded in the revenue records. Thereafter, after a demise of the appellants father, name of the plaintiff was recorded in the record of rights of the 40 R of land.

4. It is further case of the plaintiff that in 2010 the defendants started obstruction his possession in the suit land. It is further the case of the plaintiff that the defendants in collusion with one another, destroyed the bandh (embankment) between the land of the plaintiffs and the defendant Nos.1 and 2 and dispossessed the plaintiff. The appellants, thereafter, filed an application for

measurement of the property. However, the surveyor could not carry out the measurement. The plaintiff requested the decree of possession of the suit land to the defendants, but the defendants did not respond, and therefore, the plaintiff filed present suit for recovery of possession of his 40 R land from the defendants.

5. The defendant appeared in the suit through an Advocate but failed to file written statement and to contest the suit. The plaintiff led evidence in terms of his own examination as P.W.1, so also P.W.2 Vajinath Bedre, P.W.3 Pralhad Lakhangire, who measured the land of plaintiff and the defendants and P.W.4 Kisan Kshirsagar. The Trial Court after considering the evidence adduced by the plaintiff, decreed the suit by Judgment and decree dated 24/10/2016 and directed the defendant No.5 and 6 to deliver the possession of 40 R land from Gut No.632 as shown in the measurement map at Exhibit 59. The appellant challenged the Judgment of the Trial Court before the Appellate Court. The Appellate Court has also confirmed the Judgment passed by the Trial Court. The appellant thus challenged the Judgment passed by both the Courts below in the present second appeal.

6. It is the contention of the appellant that the defendants are

illiterate people and though represented through an Advocate, failed to file written statement and to contest the proceedings and thus an opportunity be given to them and orders of the Court below be set aside and matter be remanded back and appellants be permitted to defend the suit, and that irreparable loss would be caused to the appellant in the event that the Judgments of the Courts below are sustained.

7. Having gone through the Judgment of the Trial Court as well as the Appellate Court. The Judgments are based on the evidence and it is demonstrated that the defendants are purchasers of the suit property of father of the plaintiff. After selling of the properties by various sale deeds, the plaintiff was left with 40 R of land. The Court Commissioner was appointed to measure properties in which the defendants remained present. The Taluka Land Inspector of Records was appointed as a Court Commissioner for measurement of the suit land. As per the order, the measurement was conducted by TILR. The TILR issued notices to the persons mentioned in the 7/12 extracts of land Gut No.632. He measured the land and thereby prepared panchanama. At the time of panchanama and the measurement, the plaintiff himself and defendant Nos.1 to 6 and 8 were present and son of defendant No.2 was also present. At the

time of measurement it was found that 40 R land of the plaintiff was in possession of the defendant No.5 and 6, they are namely Digamber Somla Rathod and Hariba Somla Rathod. The encroached portion is marked in blue colour and it is 48 R and encroachment is made by the defendant Nos.5 and 6. Defendant Nos.5 and 6 are in possession of extra land. It is defendant No.6 Hariba Somla Rathod who is found to be in possession of extra 35 R land of the plaintiff and defendant No.5 Digamber Somla Rathod is in possession of 33 R extra land of the plaintiff. They were holding land beyond that portion which was sold to them.

8. After considering the evidence and the report of the Court Commissioner, the Trial Court decreed the suit and directed the defendant Nos.5 and 6 to hand over the possession of excess land which is their possession belonging to the plaintiff. The same is upheld by the Appellate court after considering the matter. In the instant case no substantial question of law arise for consideration as the appellants have not been able to demonstrate any right over the excess land in their possession. The appellants are in possession of their part of the property purchased by them through the sale deeds. The excess land in possession is asked to be delivered to the plaintiff. The plaintiff is owner of 40 R land accordingly and direction

is issued. The suit is decreed to deliver 40 R land to the plaintiff. Thus, no substantial question of law arises in the present second appeal. The plaintiff although appeared through a Lawyer, has failed to conduct the matter. No meaningful purpose would be served by remitting the matter back as there is no iota of right of the appellant over the land directed to be delivered to the plaintiff. In view of this, the second appeal is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.