

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO. 289 OF 2019

Sambha S/o Bapurao Deokate & another Appellants

Versus

Nagorao s/o Sambhaji Habgunde & another Respondents

Mr. U. L. Telgaonkar, Advocate for the appellants.
Mr. A. A. Fulfagar, Advocate holding for Mr. P. R. Katneshwarkar,
Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
DATE : 10th APRIL, 2023.

PER COURT :

1. Heard.
2. This appeal is filed against the judgment and decree passed in Regular Civil Appeal No. 4/2011 wherein the suit in respect of Gat No. 1053 is dismissed.
3. Appellants are original plaintiffs. Suit bearing Regular Civil Suit No. 137/2006 was filed for declaration and injunction in respect of Gat No. 1053 and 1059 situated at village Risangaon, Tq. Loha, Dist. Nanded. It is the claim of the plaintiffs that the suit properties are their ancestral properties and after death of their ancestor Bapurao, their names were entered into revenue record. It

is alleged that defendants are trying to grab the suit properties and in collusion with the Consolidation Officer, they have got their names mutated in the revenue record on 25.09.1994. It is further stated in the plaint about the challenge being raised to this entry made by the Consolidation Officer.

4. Defendants filed written statement and resisted the suit. Though defendants admit ownership and possession of the plaintiffs in respect of property Gat No. 1059, however, opposed the claim of plaintiffs in respect of Gat No. 1053 and claimed themselves to be owner thereof.

5. Trial Court laid initial burden on the plaintiffs to prove that they are owners of Gat No. 1053 and 1059 and in possession thereof. After allowing the parties to adduce evidence, Trial Court dismissed the suit. The learned First Appellate Court however, while partly allowing the appeal has declared the plaintiffs as owners of Gat No. 1059 and restrained the defendants from obstructing possession of plaintiffs over the said land. The judgment and decree of dismissal of the suit in respect of Gat No. 1053 is confirmed. The defendants have not challenged judgment of Appellate Court and decree passed in respect of property Gat No. 1059.

6. Learned counsel for the plaintiffs/appellants states that the Trial Court and the First Appellate Court have committed error of law by not considering the fact that in collusion with the Consolidation Officer in the year 1994, the defendants got their name entered into the record in respect of Gat No. 1053. According to him, the Courts below have not considered the entry of the plaintiffs in respect of the said land since 1962. He further states that apart from the revenue record, oral evidence was also led before the Court in order to prove the title and possession of plaintiffs over Gat No. 1053, which was ignored by both Courts.

7. Learned counsel for the defendants supported the impugned judgment and decree passed by the First Appellate Court.

8. Since the plaintiffs have filed suit for declaration and injunction in respect of Gat No. 1053, the initial burden is on them to prove their title and possession over this land. The evidence led on record indicates that the plaintiffs have sought the place reliance on revenue record and the entry taken by the Consolidation Officer at the time of implementation of Consolidation Scheme wherein in respect of Gat No. 1053 to claim that names of plaintiffs are included

in the record as owner and occupier of the said land. It is however, not in dispute that the defendants raised the challenge to said entry before the Consolidation Officer under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act and the said authority by order dated 21st May, 1994 entered the names of defendants in respect of Gat No. 1053 as owners and cultivators. It seems that plaintiffs are seeking challenge to the said entry in this suit. Section 36(a) of the Act creates bar to the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under this act required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-Section (2) further states that no order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court. Thus, it is not open for the Civil Court to go into the legality and validity of the said order passed by the Consolidation Officer in favour of defendants. The claim of plaintiffs cannot sustain on the basis of entry taken at time of consolidation scheme.

9. Plaintiffs have examined Vasant (PW 2) who is the Sarpanch of village Risangaon to establish their ownership and possession over Gat No. 1053. Cross examination of this witness reveals that he was unable to give material particulars in respect of

said land. He has also shown ignorance as to whether the suit land is ancestral land of defendants or not. Thus, his testimony is not sufficient to decide issue involved and has been rightly rejected by the Trial Court. Consequently, there is no material placed before the Court to hold that the plaintiffs are owners and in possession of Gat No. 1053 and thus suit must fail.

10. In an appeal under Section 100 of the Code of Civil Procedure, unless it is shown that the Courts below have misconstrued the evidence or ignored the material evidence on record, the findings of fact cannot be interfered with. Apart from this, no substantial question of law is involved in this appeal. In the result, appeal stands dismissed.

11. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb