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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 658 OF 2022

Shersingh Hirasingh Fauji	... Appellant
Versus	
Cotton Research Centre and Ors.	... Respondents

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Mr. S.A. Mulla h/f. Mr. S.S. Choudhary – Advocate for Appellant
Mr. E.P. Sawant – Advocate for Respondent No.1

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CORAM : GAURI GODSE, J.

DATE : 11th January, 2023

PER COURT :

1. Appellant is original plaintiff. Special Civil Suit No. 31 of 2006 filed by the appellant for declaration of ownership and perpetual injunction in respect of land Survey No.86/1/C was dismissed by the learned Civil Judge, Senior Division, Nanded on 4th July, 2011. The appellant preferred Regular Civil Appeal No. 197 of 2012 for challenging the judgment and decree passed by the Trial Court. The appeal preferred by the appellant was dismissed by learned Extra Joint District Judge -1, Nanded on 27th August, 2019, hence the appellant has filed this present Second Appeal.

2. Learned counsel for appellant submits that, one Bholasingh had executed an agreement for sale in favour of appellant on 30th

December, 1996 in respect of suit property being land survey no. 86/1/C situated on Degloor-Hyderabad road corner, Nanded. He submits that, pursuant to the agreement he had made part payment of Rs.4,25,000/- and remaining amount towards consideration was to be paid at the time of execution of the sale-deed. It is further case of appellant that, sale-deed was to be executed within a period of five years after payment of remaining consideration amount. It is submitted on behalf of appellant that, Bholasingh died on 5th August, 1997 and his son Daljitsingh also died on 29th March, 1987. After death of Bholasingh and Daljitsingh, heirs and legal representatives were not traceable for the payment of balance consideration amount, hence, it was not possible to get the agreement specifically performed in favour of the appellant.

3. Learned counsel for the appellant submitted that pursuant to the agreement he was put in possession and therefore, he filed suit for decree of declaration as well as protection of possession. He submits that, both the courts have not taken into consideration the fact of execution of the agreement and the consideration amount paid by the appellant and have erroneously dismissed the suit as well as appeal preferred by the appellant. Hence, he

submits that, the Second Appeal requires to be admitted for consideration.

4. Learned counsel appearing for respondent no.1 states that the suit property is acquired under the Land Acquisition Act and the father of Bholasingh i.e. Attarsingh had already filed land acquisition reference for enhancement of compensation. During the pendency of the land reference, Attarsingh died and Bholasingh was impleaded to the said land acquisition reference. Thus, it the case of the respondent-defendant that, pursuant to the acquisition proceedings the respondent was put in possession of suit land and all the documents with respect to the same are produced before the trial court and are exhibited documents. Hence, it is submitted that there is a finding recorded that, the respondent was put in possession of the suit property under land acquisition proceedings. Hence, he submits that, there is no substantial question of law and the Second Appeal needs to be dismissed.

5. I have perused the judgments of the both the courts. There is a specific finding recorded by the Trial Court that the suit property was acquired in the land acquisition proceedings and the

respondent no.1 was put in possession of land. The acquisition proceedings, the letter of possession as well as area statement showing that the respondent is in possession of suit property are exhibited documents before the Trial Court. After examining the exhibited documents with respect to possession of the respondent, the Trial Court recorded a finding that, the appellant failed to prove his possession and that the possession is of the defendant pursuant to the acquisition proceedings. It is pertinent to note that, the suit property is acquired in the year 1976 and letter of possession produced on record is dated 20th May, 1976. The appellant is claiming to be in possession of the suit property pursuant to an agreement executed in the year 1996 hence, the case of the appellant cannot be accepted. The documents on record would show that, appellant is not in possession of the suit property.

6. The First Appellate Court has also confirmed the findings recorded by the Trial Court with respect to the possession of the suit property. There is no illegality or infirmity in the findings recorded by both the courts with respect to the possession of the respondent no.1. In so far as the prayer for declaration is concerned, except agreement for sale relied upon by the

appellant, there is no other document showing the title and/or possession of the appellant. Appellant is claiming through Bholasingh, however, suit land was already acquired from Attarsingh, father of Bholasingh, much prior to the agreement relied upon by the appellant. Therefore, documents of acquisition proceedings shows that Bholasingh himself was not the owner and was not in possession on the date of agreement. Therefore the agreement executed by Bholasingh was of no help to the appellant. Thus, in my view both the courts have rightly refused to grant any decree for declaration of title and any injunction in favour of appellant.

7. Learned counsel for appellant has relied upon the judgment passed by this court in Second Appeal No. 340 of 2017. The said second appeal was filed by respondent no.1 herein for challenging concurrent judgment and decree for declaration and injunction passed in favour of one Nirankar Kaur S. Deep Singh Gadiwale. The suit filed by Nirankar Kaur was in respect of part of the same survey number i.e. survey no.86 which was originally owned by Attarsingh. Nirankar Kaur had relied upon the agreement for sale executed by Bholasingh - son of Attarsingh. In the said suit Nirankar Kaur (plaintiff) was held to

be in settled possession and hence there was injunction decree passed which was confirmed by the first appellate court. The said decree was confirmed by this court in Second Appeal No. 340 of 2017. Hence, it is submitted on behalf of appellant that, the present case similar to the case of Second Appeal No. 340 of 2017 hence, on the same ground the present second appeal also requires consideration. So far as the second appeal in the suit filed by Nirankar Kaur considered, there was concurrent findings of fact recorded in favour of the plaintiff. The judgment of this court in the said second appeal shows that, the plaintiff therein was found to be in settled possession and hence, it was held that her possession cannot be disturbed otherwise than due due procedure of law. In the said second appeal the decree of injunction passed in favour of plaintiff therein was confirmed on the basis of findings of facts recorded by both the courts. So far present second is concerned, both the courts recorded concurrent findings of facts and the appellant is not found to be in possession of the suit property. The judgment passed in the Second Appeal No. 340 of 2017 is of no assistance to appellant's case.

8. Both the courts have examined the documents and evidence on

record and have recorded the finding of fact that the respondent no.1 was put in possession of the suit property. There is no record to show that, appellant is in possession of the suit property. There is no substantial question of law involved in the Second Appeal, therefore, the Second Appeal is dismissed. There will be no orders as to costs.

[GAURI GODSE]
JUDGE