

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR
BENCH AT NAGPUR

SECOND APPEAL NO.94/2007

Wamanrao S/o Balkrishna Singam,
Since deceased, through Legal Representatives.

- A) Avinash S/o Waman Singham,
aged about 52, Occupation : Agriculturist
and Service, R/o C/o The Maharashtra State
Co-operative Bank Ltd., 9, Chamber of Commerce
Lane, Fort, Mumbai. (Son)
- B) Kishor S/o Waman Singham,
aged about 50, Occupation : Agriculturist
R/o Tukum Ward No.3, Tadoba Road,
Chandrapur, Tq. & Distt. Chandrapur (Son)
- C) Sau. Madhuri Kargirwar,
aged about 54 years, Occ : House Hold,
R/o O-4, Rutu Apartment, Sneha Nagar,
Nagpur, Distt. Nagpur (Daughter)
- D) Sau. Manjusha S. Karlekar,
aged about 48 years, C/o Dr. Karlekar Hospital,
Mama Chowk, Civil Lines, Gondia,
Distt. Gondia (Daughter)

.....**APPELLANTS**

...VERSUS...

1. The Collector, Chandrapur,
(Representative of State of Maharashtra)
2. The Secretary to the Government of
Maharashtra, Revenue & Forest
Department, Maharashtra State,
Mantralaya, Mumbai
3. The Sub Divisional Officer,
Bramhapuri, Tah. Bramhapuri,
District – Chandrapur.

4. The Resident Deputy Collector,
Chandrapur, District Chandrapur
5. The Tahsildar, Bramhapuri,
District – Chandrapur.

.....**RESPONDENTS**

Mr. S. S. Deshpande, Advocate for appellants.

Mr. K. L. Dharmadhikari, Assistant Government Pleader for
respondents.

CORAM:- ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : 05.07.2023

JUDGMENT PRONOUNCED ON : 10.08.2023

JUDGMENT

Heard Mr. S. S. Deshpande, learned counsel for appellants and Mr. K. L. Dharmadhikari, learned A.G.P. for respondents-State.

2. The appellants are legal representatives of original plaintiff – Wamanrao Balkrishna Singam (hereinafter collectively referred to as ‘the plaintiff’). The respondents are original defendants and represent the State of Maharashtra (hereinafter referred to as ‘the defendants’).

3. The plaintiff has preferred the instant appeal under Section 100 of the Civil Procedure Code, 1908 (in short the,

‘Code’) challenging the judgment and decree dated 14.12.2006, passed by the Ad hoc District Judge-I, Chandrapur in Regular Civil Appeal No.182/2004, whereby the first appeal has been dismissed and thus the judgment and decree dated 17.08.2004 passed by Jt. Civil Judge Senior Division, Chandrapur in Regular Civil Suit No.57/2002 has been maintained. The trial Court by the aforesaid judgment had dismissed the suit.

4. The appeal has been admitted on the following substantial question of law.

“Whether the findings recorded by the first appellate Court regarding the relationship of the appellant with deceased Shriram and that the appellant was not deemed to be an owner of the suit property, were justifiable in the facts and circumstances of the case?”

5. The necessary facts to decide the substantial question of law are as under:

The plaintiff filed a suit for declaration of ownership over the suit land and also for permanent injunction against the defendants-revenue authorities. The plaintiff's case was that his ancestors were *Lambardars* of mouza Akapur alias Rupala in Tahsil Brahmapuri, District Chandrapur. The ancestors were cultivating

the suit land bearing Gat No.134 and 136 admeasuring 30 acres each, total admeasuring 60 acres. The land was in the possession of the plaintiff's ancestors prior to and subsequent to coming into force, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short, 'the Act of 1950').

6. According to the plaintiff, in the year 1941-42, Shriram alias Bhaiyaji Singam (Since deceased), the brother of the plaintiff had applied for grant of permission to bring the suit land under cultivation which otherwise was recorded as tree forest. The Tahsildar, Bramhapuri conducted inquiry and recommended the Sub Divisional Officer, Bramhapuri to grant permission to Shriram to cultivate the land under the scheme, 'Grow More Food'. The Deputy Commissioner, Chandrapur accepted the proposal and on 01.09.1942 granted permission.

7. It is the case of the plaintiff that he has inherited the suit land from his ancestors and started cultivating the same. Accordingly, plaintiff claimed ownership over the suit land in terms of Sections 38, 41, 53 and 56 of the Act of 1950 and the Rules made thereunder.

8. The plaintiff then pleaded that after the lapse of 46 years i.e. on 18.12.1987, the defendant no.5 – Tahsildar passed an order in Revenue Case No.89/LEN-39/86-87 and imposed fine of Rs.2000/- and ordered the plaintiff to vacate the land and hand over the possession to the Government. The said order was challenged by the plaintiff by filing an appeal before the Sub Divisional Officer, Bramhapuri, which came to be dismissed vide order dated 02.09.1988 on the ground that the permission to cultivate the land was granted for the period of two years only. The plaintiff preferred an appeal before the defendant no.4 – Collector, who dismissed the same and thereafter the plaintiff approached the Secretary, Revenue and Forest Department, Government of Maharashtra, who had also on 28.02.2002, dismissed the said appeal.

9. The plaintiff did not challenge the order passed by the Secretary, Revenue and Forest Department but filed the suit on the ground that he is entitled for permanent occupancy under the provisions of the Act of 1950.

10. The defendants resisted the claim by filing written statement. The defendants admitted that in the year 1941-42,

Shriram was granted permission to cultivate the suit land but for two years. The rest of the contentions were denied. According to the defendant, Shriram did not deliver possession to the Government. The suit land is a forest land and as per the Indian Forest Act, 1927, the forest land cannot be granted on lease to any person.

11. According to the learned counsel for the plaintiff the Lambadar cannot be declared as encroacher. He placed reliance on Sections 4 and 38 of the Act of 1950, to contend that the plaintiff is entitled to possess the land in the capacity of Malik Makbuza. It was/is also the case of the plaintiff that he obtained loan for soil conservation and that such loan can only be granted to the owners for the development of land.

12. The learned A.G.P. contends that the plaintiff has not filed any documents to show that he was in lawful possession of the suit land. The Naib Tahsildar had on 30.07.1971 issued notice to him and after inquiry has declared plaintiff to be an encroacher. The plaintiff carried the order before the Government of Maharashtra but the order of Tahsildar was maintained. This order has attained finality and therefore suit was not maintainable.

13. Both the courts below have held that the plaintiff failed to prove his ownership over the suit land or that the defendants are trying to dispossess him unlawfully.

14. The plaintiff has examined himself and two more witnesses. Plaintiff – Wamanrao testified in tune with the plaint. In cross-examination, he deposed that Shriram alias Bhaiyaji was his elder brother. Shriram expired 10-12 years back. He then deposed that the land was leased for two years and after two years, Shriram did not deliver the possession to the Government. Shriram did not apply for extension of lease. The Government has not issued any certificate to him or his ancestors about Malgujar.

15. PW2 Pundlik deposed that he is acquainted with the plaintiff and that the plaintiff was Malgujar of village Akapur prior to the abolition of Malgujar Act and that the plaintiff was in possession of the suit land. In the cross-examination, it has been brought on record that he did not file any document to show that he resides at Talodhi village. It is then elicited from his mouth that the plaintiff was working as Block Development Officer and has served for more than 20 years.

16. PW3 Kartarsingh has deposed that he knows the plaintiff and that the suit land was in his possession for substantial period and that the plaintiff has right of ownership over the suit land. In cross-examination, it was brought on record that he was working as Watchman of plaintiff for a period of 45 years and has not seen any document of suit land.

17. As could be seen, the evidence of these three witnesses doesn't, in any manner, establish any right, title or interest of the plaintiff over the suit land. None of the witnesses have produced any document to prove that the suit land was allotted to Shriram for any other purpose than for cultivation or that the nature of allotment was such that the property was inheritable.

18. The contentions of the plaintiff were and are that his ancestors were Lambardars/Malgujars of the village. The suit land was under their possession since about 1941-42. The plaintiff's ancestors applied for grant of lease of the suit land and after inquiry the suit land was granted on lease under the scheme of "Grow More Food". The plaintiff and his ancestors were in continuous possession and were cultivating the suit land. On 26.01.1951, the Act of 1950

came into force. The possession continued with the plaintiff and the plaintiff's ancestors. The defendant no.1 after 46 years held that the plaintiff is an encroacher. However, the plaintiff failed to show that suit land was ever possessed by his ancestors. In fact, plaintiff himself has pleaded that his brother Shriram had first applied to the Government seeking permission to cultivate the suit land. The brother is, admittedly, not the ancestor of the plaintiff.

19. The Courts below have also referred to Sections 3, 4, 38, 40 and 41 of the Act of 1950. According to the Courts below, Section 4 authorized Additional Deputy Collector to permit clearing of portion of land for cultivation and that the permission for cultivation can be granted for a stipulated period. Accordingly, the permission was granted to Shriram cultivate the land for two years.

20. The Courts below have then noted that the plaintiff has suppressed the fact that he was in service as Gram Sevak and was later promoted as Block Development Officer. The Courts below have then noted from the maps Exh.-30, 31, 32 and 33 that the suit land, admeasuring 60 Acre was owned by the Government. Exh.-35, Khasra for the year 1970-71 to 1973-74 indicates that the plaintiff

on 30.07.1970 mutated his name. Exh.-36 Khasra for the year 1969-70, show that the said land was shown as Government land. The Courts below have then considered various revenue documents to arrive at a conclusion that the suit land was owned by the Forest Department. The revenue entries also indicated that the plaintiff has encroached upon the suit land. The documents Exh.-34 to 42 indicate that the plaintiff was in possession of the suit land from the year 1964 onwards. The plaintiff did not file any document to show that prior to 1964, the suit land was in his or his ancestor's possession. Rather the documents show that the suit land was not only the Government land but it was reserved for grazing purpose. For all these years, the plaintiff is shown as encroacher and was shown to have forcibly cultivated the suit land.

21. The Courts below have then considered the effect of Section 38 of the Act of 1950. It provides the rights of proprietor and according to it every proprietor who is divested of his proprietary rights in an estate shall, with effect from the date of vesting, be a malik-makbuza of home-farm land in his possession. The Courts below however found that the plaintiff has not led any reliable evidence to show that he has divested his proprietary rights.

22. Section 41 deals with right of absolute occupancy and occupancy tenant but the plaintiff failed to prove that he was in possession of the suit land as a tenant. Thus, the provisions of the Act of 1950 were found to be of no assistance to the plaintiff.

23. The Courts below have then referred to the Rules framed under the Act of 1950. Under these Rules, the revenue officer on receipt of application has to conduct an inquiry for the allotment of land to the needy persons. The plaintiff however failed to lead any evidence to show that the land was so allotted to him or his ancestors in terms of the aforesaid rules. The then Tahsildar, being informed that the plaintiff was in possession of another land bearing survey no.135 admeasuring 4.80 Hectare of land prior to 1958, after due inquiry held that since the encroachment of plaintiff was prior to 1958, said land was required to be regularized and allotted it to the plaintiff as Bhumidhari rights.

24. The plaintiff, who appears to be a greedy person, was not satisfied with this allotment and with an intention to grab more land, has encroached upon adjacent lands admeasuring 60 Acres.

25. The Courts below have also noted the conduct of the plaintiff in the sense, firstly the plaintiff suppressed that he was in Government service. Secondly, he failed to prove that his ancestors were in possession of the suit land. He made a vague pleading that the deceased Shriram was his ancestor when, in fact, he was his (plaintiff's) brother.

26. The contention of the plaintiff that he has incurred huge expenses for improvement of the suit land and has obtained loan from Soil Conservation Department has also been considered by the Courts below. The plaintiff has, except for Exh.-49, not filed any document in support of such contention. Exh.-49 is the notice issued by Tahsildar, Brahmapuri dated 12.07.1988 for recovery of Rs.613.20/-. This document was found to be silent on the recovery of an amount in respect of the suit property. Thus, this document was not pertaining to the suit property.

27. The Courts below have then considered the effect of revenue proceedings. Tahsildar on 28.12.1987 has issued notice Exh.-48 to the plaintiff and imposed fine of Rs.2,000/- for the reason that the plaintiff has illegally cut down and disposed of the trees

standing on the land bearing Gat Nos.134 and 136 as also for encroaching upon 60 Acres of land. The Sub Divisional Officer upheld the said finding vide order Exh.-50. The Sub Divisional officer noted that the learned Collector has granted permission to bring land area 60 Acres, only for two years. It is further held that after abolition of the proprietary rights, Ex. Malgujari Khudkast lands and other lands vested with the Government and according to 1954 record of rights, suit land is recorded as tree forest and vested with the Government and is now owned by the Government. The Resident Deputy Collector has also upheld the finding of Tahsildar vide order Exh.-51. Similarly, the Secretary, Revenue and Forest Department vide orders Exh.-52 and 53 has maintained the finding of Tahsildar dated 28.12.1988.

28. Thus, what transpires is that the plaintiff was in Government service and has encroached upon 60 acres of the Government land and such encroachment has been continued by him in his lifetime and thereafter by his legal representatives, knowing fully well that they have no authority to occupy the said land. The plaintiff has utilized Government land admeasuring 60 acres for his personal benefit without any authority and has after

losing the battle in revenue proceedings, abused the Court process to withhold the possession, which was declared illegal by revenue authority. Thus, the plaintiff has left no stone unturned to grab the Government land. This conduct clearly demonstrates the abuse of process of law and is definitely deprecable conduct.

29. In fact, this Court while admitting the appeal on the substantial question of law vide order dated 11.09.2007 has impliedly noted the conduct of the plaintiff, in the following words:

“.....It is not in dispute that the appellant/plaintiff is in possession of the suit land admeasuring almost 60 acres of land which belongs to the Government. In the year 1941-42, one Shriram was granted permission to cultivate the land under the Grow More Food Scheme. According to the respondents, Shriram was the leaseholder for only two years. The appellant/plaintiff claimed that Shriram is his ancestor. Both the Courts held that the plaintiff has utterly failed to prove that Shriram, the original leaseholder, was the ancestor of the plaintiff. Since the institution of the suit in the year 2002, the plaintiff is in possession of the suit land. Second appeal is admitted on a substantial question of law.

In the facts and circumstances of the case, though it is necessary to protect the possession of the appellant/plaintiff during the pendency of the second appeal, the possession of the plaintiff could be protected only on certain conditions. The appellant

claims that he is cultivating the suit land comprising of 60 acres.

*In the facts and circumstances of the case, it would be necessary in the interest of justice to direct the appellant to furnish solvent surety/ security to the tune of **Rs. 40 lakhs** within a period of eight weeks from today.*

In case the appellant failed to furnish solvent surety/security as aforesaid to the satisfaction of the Registrar, the interim relief granted by this Court would automatically stand vacated and the respondents will be free to take steps against the appellant in accordance with law....”

(Emphasis now)

30. The plaintiff did not furnish the security/surety as aforesaid but on 23.01.2008, made a request to reduce the amount on the ground that it is practically impossible for him to furnish security to the extent of Rs.40,00,000/-. The Court was pleased to reduce the security amount to Rs.10,00,000/-, which the plaintiff has furnished. This solvent surety was, however, not renewed and thus the abuse continued. Further, no efforts were made by the plaintiff to get the second appeal listed nor has learned Assistant Government Pleader pointed out to this Court that this appeal requires immediate attention, though the Government of Maharashtra has filed cross-objections to maintain order dated

18.12.1987 passed by Tahsildar. In fact this order has attained finality since the order dated 28.02.2002 passed by the Revenue Secretary maintaining the order of Tahsildar has not been challenged by the plaintiff. The cross-objection, therefore, will naturally become insignificant, if the appeal filed by the plaintiff is dismissed.

31. Thus, the fact remains that this Court has, in a way, realized while passing the interim order that the plaintiff has abused the process of law, which, to my mind, is continued till today. The plaintiff, who was a public servant, has utilized Government land for personal benefit during his lifetime. The legal representatives continued the ill will. The legal representatives appear to be well placed, considering their professions as reflected in cause title but have carried forward the greedy legacy of their father to grab the Government land. The appellants/plaintiff have used the Government land for more than sixty years. The Courts below have rightly held that Shriram was brother of plaintiff and not his ancestor and that the suit land was never possessed by the plaintiff's ancestors and that plaintiff failed to prove the deemed ownership over the suit land. The substantial question of law is answered

accordingly. However, the land grabbing attitude of the plaintiff/appellants will have to be dealt with by an iron hand to send a loud and clear message to the land grabbers by imposing exemplary costs, which ought not to be less than Rs.50,00,000/-, for the following reasons.

(a) The original plaintiff, despite in Government service, has encroached upon 60 Acres of Government land and utilised the same for personal benefits for his entire life and thereafter by his legal representatives (the appellants herein), which period runs into about six decades. The benefits, if calculated, on an average of Rs.1,500/- per acre per year, would amount to Rs.90,000/- per year and for sixty years, it would become Rs.54,00,000/-.

(b) The appellants/plaintiff despite losing battle at the revenue authorities, have abused the process of law by filing suit and retained possession knowing fully well that they were not authorised by any law to do so. This abuse was realized by this Court in the year 2007 itself when initial order was passed and the appellants were directed to furnish the surety/security for Rs.40,00,000/-. This amount was reduced to Rs.10,00,000/-

at the request of the learned counsel for the appellants/plaintiff vide order dated 23.01.2008, subject to a condition that both the parties have agreed for the appeal being heard and disposed of in the third week of April, 2008. However, the solvency certificate has been furnished by the appellants/plaintiff on 28.04.2008, which is beyond the agreed time of disposal of appeal and which was valid for one year. The said certificate was not subsequently renewed by the appellants/plaintiff. The appellants/plaintiff have, thus, taken the court for granted.

(c) The appellants/plaintiffs have not taken any steps to get the appeal listed on priority and thus with an intention to continue the unlawful possession, have kept the second appeal pending.

(d) For this abuse of process of law coupled with the conduct of the appellants/plaintiff, to grab the Government land, costs has been quantified at Rs.1,00,000/-, considering the prolonged abuse of process of law as also for the plaintiff has suppressed the fact from the Court that he was employed as a Block Development Officer.

32. The appeal is accordingly dismissed with exemplary costs, restricted to Rs.50,00,000/-, which the appellants/plaintiff shall jointly and severally deposit with the Registry within eight weeks from today, which shall be then transmitted to the Government of Maharashtra, through Revenue and Forest Department. The appellants/plaintiff shall furnish on affidavit the details of their profession/occupation along with movable and immovable properties belonging to them within seven working days from today. All the immovable and movable properties including the bank accounts of the appellants/plaintiff stands attached until Rs.50,00,000/- is deposited in the Court. If the costs, as aforesaid, is not deposited within eight weeks, the Collector, Chandrapur shall take immediate steps to recover the amount as land revenue and shall file report to that effect. The appellants/plaintiff shall hand over possession of the suit land within one week from today, failing which, the concerned Tahsildar shall forthwith take possession of the suit land. The bank account of all the appellants/plaintiff shall stand frozen except for realizing the cheque/demand draft of the amount of the exemplary costs. The appellants/plaintiff, however, are permitted to withdraw, from their bank accounts, an amount

Rs.5,000/- per day. The appellants/plaintiff are at liberty to seek modification of the order except as regards the exemplary costs, which, if filed, shall be considered on its own merit.

The above order, directing Tahsildar to take possession of the suit land on failure of the appellants to hand over the possession, would serve the purpose of the cross-objection and thus no separate order is called for in the cross-objection.

33. Mr. S. S. Deshpande, learned counsel for the appellants, shall communicate the order to the appellants on phone today itself. Any defiance of the order will be viewed seriously and may lead to action for aggravated contempt of the Court.

34. At this stage, learned counsel for appellant submits that the appellants would like to take a chance before the Hon'ble Supreme Court and accordingly made a request to stay the effect and operation of this order for six weeks.

35. This request cannot be acceded to for any extension of time will amount to permitting the appellants/plaintiff to continue with the abuse of the process of Court. Even otherwise, eight weeks time is granted to the appellants to deposit the exemplary costs. The

compliance of other part of the order will, at least, indicate that at the end of the day, the good sense has prevailed over the mind of the appellants. The request is accordingly refused.

36. Before I part with the judgment, the issue of not processing the solvent security/surety to secure the amounts directed by the Court needs to be addressed. The appellants had deposited security for payment of amount of Rs.10,00,000/- in the form of solvency certificates of Rs.5,00,000/- each. The solvency certificates were not renewed after the year 2009. As such, it was the appellants'/plaintiff's duty to renew the solvency certificates pending appeal but he did not. However, the Registry, to my mind, ought to have placed the matter before the Registrar (Judicial) or ought to have brought this fact to the knowledge of the Court to pass appropriate orders as regards renewal of the solvency certificates. It appears that there is no provision to that effect in the Bombay High Court Appellate Side Rules, 1960 and therefore the officials kept silence. The purpose of getting security/surety is thus defeated. Similar such unrenewed sureties must be lying with the Registry in other matters. The Registrar (Judicial), therefore, is directed to examine the Rules and if there indeed is no provision in the Bombay

High Court Appellate Side Rules, 1960, he shall take steps for issuance of a circular or a standing order or a practise note directing the officials of the Registry to place such matters before Registrar (Judicial) upon expiry of the bank guarantees, solvency certificates, sureties, etc. tendered by the litigants. The Registrar (Judicial), shall, thereupon, take appropriate steps for renewal of the sureties/securities.

The Second Appeal as well as the Cross-Objection are disposed of in the above terms.

(Anil L. Pansare, J.)

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