



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.271 OF 2024

Kalyanrao Madhavrao Deshpande
Degaonkar & Ors.

...Appellants

Versus

The State of Maharashtra,
through Collector, Nanded & Ors.

...Respondents

Adv. Mukul S. Kulkarni for Appellants.

Mr. V. S. Badakh, AGP for Respondent-State.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2024.

P.C.:-

1. The Appellants-Original Plaintiffs impugn judgment and decree dated 6th January 2024 passed by learned District Judge-1, Biloli in Civil Appeal No.46 of 2016, whereby the judgment and decree dated 15th November 2016 passed by learned Civil Judge, Senior Division, Biloli in Regular Civil Suit No.54 of 2013 is confirmed. (Parties are hereinafter referred as per their status in suit)

2. The gist of Plaintiffs' contention is that late Madhavrao Narayanrao Deshpande was owner and possessor of field Survey Nos.1/1 (Gat No.8) and 3/1 (Gat No.5), Survey No.4 (Gat No.6) and Survey No.168 (Gat No.294) situated at village Tadkhel, Taluka Degloor, District Nanded, admeasuring 25 Hec. 91 R, which is now part

of Block Nos.8, 5, 6 and 294. According to Plaintiffs, suit lands were granted by Nizam Government to Siddi Khaja Moinuddin Khan, the Inamdar with rights to recover revenue from the occupants. The forefathers of Plaintiffs were “Kabiz-e-Kadeem” and in actual possession of the land. They were paying land revenue to Inamdar. The Plaintiff Nos.1 to 3 are sons of Madhavrao, who expired on 5th October 2000. Consequently, ownership and possession of the land vested to them being successors of Madhavrao. It is specifically pleaded that suit is filed on the basis of title against Defendants. The Defendant Nos.1 and 2 are Government custodians “Sarkari Nigarani” of the suit lands”.

3. According to Plaintiffs, in the year 1938, their grand-mother executed registered lease deed in favour of Sadasukh Jankidas for the period of 12 years. The document is titled as “Kaulnama”. Consequently, Sadasukh Jankidas was put into the possession of suit land for the period of 12 years, subject to condition of payment of Rs.300 per year. Since Sadasukh Jankidas failed to pay the lease rent, dispute arose. Sadasukh refused to restore possession in favour of Plaintiffs’ father, i.e., deceased Madhavrao. Consequent to dispute, Tehsildar Degloor took over possession of land in Government custody. According to the Plaintiffs, except Panchnama of 1943, no document regarding the aforesaid proceedings is available. Although, Panchnama

refers to the name of Siddi Khaja - Original Inamdar, it was Plaintiffs' father, who was Kabiz-e-Kadeem. According to the Plaintiffs, the suit lands were, thereafter, auctioned on "Eksala Lawani" basis by erstwhile Government. Thereafter name of State of Maharashtra appeared in ownership column of record of rights. According to Plaintiffs, prior to 1938, land was in possession of Madhavrao. In terms of lease agreement executed by their grand-mother, it was put into the possession of Sadasukh Jankidas for the period of 12 years.

4. During currency of the lease period, the lands were taken into possession by Government. The Competent Authority, i.e., Tehsildar Degloor had passed order of restoration of suit land in favour of Plaintiffs' father but that order was not executed and the suit land was continued to be auctioned on "Eksala Lawani". The practice of auction continued for some period. However, lastly, the bidders who were inducted on the basis of such auction, illegally continued in possession. The Defendant Nos.1 and 2 failed to evict unauthorised and illegal occupants from the suit land. The mutations recorded in name of such unauthorised persons are void ab-initio and confers no legal right upon them.

5. On 1st April 2010, the Plaintiffs discovered documents relating to suit property while excavating and leveling of dilapidated old house

situated at village Degaon. The Plaintiffs got translation of Urdu documents and also pursued revenue authorities for providing relevant documents pertaining to suit lands and gathered the aforesaid information. The Plaintiffs made further correspondence and representations to Defendant Nos.1 and 2 for release of the suit land in favour of Plaintiffs free from all encumbrances and also for removal of unauthorised and illegal occupants of lands but Defendants failed to act on same. The Plaintiffs have accordingly filed present suit for decree against Defendant Nos.1 and 2 to release suit land in favour of the Plaintiffs by removing illegal occupants and restore Plaintiffs possession, so also cause appropriate corrections in the revenue record.

6. The Defendant Nos.1 and 2, i.e., State Authorities filed written statement, denied ownership of Plaintiffs or their forefathers and justified revenue entries as it appears. According to Defendants, suit lands were “Deshmukh Inam lands” given by Nizam Government for service. According to defendants suit is hopelessly barred by limitation and based illusary cause of action. The Defendant Nos.3 to 17, 19 to 27 and 29 to 36 asserts their possession while denying the title of Plaintiffs. They rely upon long standing mutation entries in their name. According to them, suit is not maintainable in present form as Plaintiffs failed to seek declaration of ownership, so also possession. Even suit is barred by limitation.

7. The Trial Court framed the issues recorded evidence of the parties and concluded that Plaintiffs failed to prove their title over suit lands. The suit is hopelessly barred by limitation. The Trial Court endorsed possession of Defendant Nos.3 to 15 to be legal and valid. The Trial Court concluded that Tehsildar had took over possession of suit land from Plaintiffs' father or their lease holder sometimes in year 1940 and observed possession of Madhavrao during the period from 1932 to 1943 on the basis of Pahani Patrak of Survey Nos.4 and 168 but ultimately dismissed suit.

8. The Plaintiffs filed Regular Civil Appeal No.46 of 2016 before learned District Judge, Biloli. The Appellate Court concurred with finding of Trial Court that Plaintiffs failed to prove the ownership, so also the suit is barred by limitation. Consequently, dismissed the appeal.

9. Mr. Mukul S. Kulkarni, learned Advocate appearing for the Appellants submits that Plaintiffs have specifically pleaded that suit lands were granted by Nizam Government to Siddi Khaja and Plaintiffs' forefathers were "Kabiz-e-Kadeem". Therefore, the Courts below have wrongly dismissed the suit on the ground that the ownership of property was not proved. According to him, the Plaintiffs claimed possession of suit lands on the basis of previous possession. Hence, the

issue of ownership was not germane or relevant. The non-consideration of theory of previous possession for decision of the suit is perverse approach of both the learned Courts. Mr. Kulkarni further submitted that there is voluminous record indicating that possession of the suit land was taken over by erstwhile Government as per Section 74 of the Land Revenue Act (Act No.VIII of 1317 Fasli). That would not divest title to Government. According to him, possession was never restored to Plaintiffs' father after it was taken over under quasi judicial order. He would, therefore, urge that several substantial questions of law arises for consideration in this second appeal.

10. Having considered submissions advanced and upon perusal of plaint and relevant record, it can be observed that although the Plaintiffs claimed ownership and title over suit properties, complete reading of the plaint depict that suit lands were Government lands and erstwhile Nizam Government of Hyderabad had granted same to Siddi Khaja Moinuddin Khan by way of Inam. The Plaintiffs forefather appears to have possessed the land till the year 1938, later on under a lease deed executed by grand-mother of the Plaintiffs, possession was handed over to Sadasukh Jankidas, lease holder for period of 12 years which was to expire on or about 1950. Meanwhile, due to dispute with lease holders, land was taken over in possession by the Government. Although Plaintiffs have pleaded that land was taken from possession

grand mother, Panchnama of the year 1943 relied by Plaintiffs depict that then Tehsildar, Degloor tookover possession of the suit land from Inamdar; namely, Siddi Khaja Abdullah Khan Deshmukh and since then land was continuously auctioned on “Eksala Lawani”. The copies of 7/12 extracts from 1959 onwards depicts that name of State of Maharashtra has been mentioned in the ownership column. Both the facts finding courts dealt with issue of title/ownership of the suit properties and recorded concurrent findings that Plaintiffs have failed to prove title/ownership of the suit property. Although, Mr. Kulkarni endeavours to impress upon this Court that the Plaintiffs have prayed for decree of possession based on the previous possession, plaintiffs’ pleading particularly in paragraph 3 of plaint suggest that the suit is filed on the basis of title against the Defendants.

11. In that view of the matter, it is discernible that at one hand Plaintiffs claims title and ownership over the suit land and then claims right on the basis of previous possession as “Kabiz-e-Kadeem”. It can be observed that after 1938, there is no document that would support the case of the Plaintiffs regarding the previous possession. As per Plaintiffs’ own pleading, the land was leased out in the year 1938 in favour of Sadasukh Jankidas and, thereafter, it was taken over in possession by Tehsildar. Thereafter, it was consistently auctioned, on Eksala Lawani basis. The revenue record makes reference of the

Plaintiffs' father in relation to the suit land only for the period from 1932 to 1941. Even the Panchnama of 1943 suggest that that land was taken over in possession from the Original Inamdar, i.e., Siddi Khaja Abdullah Khan Deshmukh. Although, Plaintiffs are trying to make out the case that such reference in Panchnama is because of inadvertence, fact remains that after 1938, Plaintiffs' father was never in possession of the land.

12. Turning back to the claim of the Plaintiffs that on expiry of 12 years, period under lease deed dated 2nd November 1938, Plaintiffs' father was entitle for possession and Sadasukh Jankidas would have no right to continue in possession. It is difficult to hold that the Plaintiffs' father had acquired any right for restoration of possession. Although, Plaintiffs seeks to make reference to certain orders, wherein, there are passing stipulations about order of restoration of possession to Plaintiffs' father-Madhavrao, there is no document to show any further action pursuance to such orders. During course of hearing before this Court, Mr Kulkarni submits that infact possession was never restored to Madhavrao and it was wrongfully retained by the Government Authorities, inspite of order regarding restoration. The Plaintiffs could not file on record document depicting ownership of Madhavrao over suit land or any order that erstwhile Government had directed restoration of possession of suit land to the

Plaintiffs' father. There is nothing on record by which, it can be positively inferred that Plaintiffs are legally entitle for possession of suit land.

13. The Plaintiffs have pleaded that their father Madhavrao was “Kabiz-e-Kadeem” over the Inam land. Section 2(v)(e) of Hyderabad Abolition of Inams and Cash Grants Act, 1954, defines “Kabiz-e-Kadeem” means occupant of Inam land other than an Inamdar, who has been in possession of such land at the time of grant of Inam or has been in continuous possession of such land for not less than 12 years before the date of vesting and who pays the Inamdar only the land revenue.

14. Pertinently, on promulgation of the Inam Abolition Act, w.e.f. the date of vesting, all Inams to which act is made applicable under Section 2 shall be deemed to have been abolished and vested in the State. All rights, title and interest vesting in the Inamdar, “Kabiz-e-Kadeem” Permanent Tenant, etc. in respect of Inam land other than the interest expressly saved by provision of act is seized and vested absolutely in the State free from all encumbrances. In deference to aforesaid provisions, right of Inamdar or “Kabiz-e-Kadeem” have been abolished and the lands vest with the Government free from encumbrances. Sections 5 and 6 of the act provides for grant of

occupancy rights in respect of such lands and those rights can be decided by the State Government or authorised officer in exercise of powers conferred under Section 2(a) of 1954 Act. Sub clause 4 of Section 2(a) provides that the decision of the State Government under Sub-section 1 or under Sub-section 3 shall be final. The aforesaid legal position makes it clear that the Plaintiffs or their forefathers have lost all the rights in respect of suit property.

15. Insofar as finding on point of limitation recorded by the Courts below, Mr. Kulkarni, learned Advocate appearing for the Appellants submits that the claim of Plaintiffs was based on the previous possession. Since, Plaintiffs' possession was taken over by legal process and retained by the State Authorities Section 64 of the Limitation Act would not apply. Consequently, finding recorded by the Courts below that suit is barred by limitation is illegal. Pertinently, law recognised the claim for possession in respect of movable property either based on title or previous possession. In present case, the Plaintiff failed to prove title/ownership over the suit property. The Courts below have, therefore, rightly considered the claim based on alleged previous possession. It was for the Plaintiffs to prove that he was illegally dispossessed or his possession taken over by legal process but it has been illegally continued. It was for the Plaintiffs to plead specific date since when they were entitled for restoration of possession

and since when they should have been deemed to be dispossessed without process of law. As indicated in aforesaid paragraphs, in view of the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954, Plaintiffs have lost the right to continue in possession of the lands which were in possession of Inamdar/Kabiz-e-Kadeem. All such lands have been vested with the State Government without any encumbrance. The Plaintiffs or their father never claimed occupancy right under the aforesaid provisions till 2011-12, the Plaintiffs have not raised any claim in respect of suit property. As rightly observed by the Courts below, the private Defendants are in the possession of the property since 1958 onwards and rights have been created in their favour by operation of law. The Plaintiffs cannot claim declaration of any right against the Defendants, who are enjoying suit property. Therefore, no fault can be found in the findings recorded by the Courts below that suit is hopelessly barred by limitation.

16. Consequently, no question of law arises for consideration in this appeal. Appeal dismissed.

(S. G. CHAPALGAONKAR, J.)