



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 106 OF 2013
WITH CA/10777/2021 IN CA/7597/2020
IN CA/1280/2013 WITH CA/1280/2013

MAHADU MANIKA PANCHAL DIED
THROUGH LRS

VERSUS

THE COMMISSIONER, NANDED-WAGHALA MUNICIPAL
CORPORATION

WITH
SECOND APPEAL NO. 105 OF 2013
WITH CA/1279/2013

SAEEDA BEGUM W/O MOHAMAD NAZIR

VERSUS

THE COMMISSIONER, NANDED-WAGHALA MUNICIPAL
CORPORATION

WITH
SECOND APPEAL NO. 107 OF 2013
WITH CA/1281/2013 WITH CA/7598/2020 IN CA/1281/2013
WITH CA/10776/2021 IN CA/7598/2020 IN CA/1281/2013

MOHMAD WAHIDODDIN S/O MD. HISAMUDDIN
DIED THROUGH LRS AND OTHERS

VERSUS

THE COMMISSIONER, NANDED-WAGHALA MUNICIPAL
CORPORATION

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Mr. S. M. G. Mustafa, Advocate for the Appellants
Mr. S. P. Urgunde, Advocate for Respondents

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CORAM : R.M. JOSHI, J
DATE : FEBRUARY 13, 2024

PER COURT :

1. These Appeals take exception to the judgment and order passed in RCA No.59/2008, RCA No. 61/2008 & RCA No.60/2008 whereby the judgment and decree passed by the trial Court came be confirmed.

2. Parties are referred to by their nomenclature in the original proceedings. Since similar facts are involved and as common argument is advanced in all these Appeals, they are decided by this common order, by consent of both sides.

3. The facts which led to filing of present Appeals can be narrated in brief as under:

Plaintiffs claim to be owner and in possession of the suit land bearing Gut No. 223 (Old Survey No. 69) (in RCS No. 554 of 2005), Gat No. 221 (in RCS No. 688 of 2005) and Gat No. 223 (in RCS No. 553/2005) situated at Taroda (Bk), Tq and Dist. Nanded. It is the case of the Plaintiffs in these suits is that they are owners and in possession of respective suit property. Plaintiff in RCS Nos. 553 of 2005 and 688 of 2005,

claim ownership and possession of suit property on the basis of sale deeds dated 21/10/2002 and 21/10/2005 respectively, executed by erstwhile owners. Whereas claim of plaintiff in RCS No. 544 of 2005, is based on inheritance of tenancy. It is claimed by them that they are paying taxes in respect of the suit land regularly. It is alleged that Defendants has no concern with the suit land. There is allegation that earlier there was a reservation in respect of the said land for acquisition for aerodrome and the said reservation came to be revoked but in spite of the same without any authority Defendant has tried to obstruct the possession of the Plaintiffs over the said land. By apprehending the act of dispossession, suits were filed for seeking injunction against the Defendants not to dispossess the Plaintiffs from suit land.

4. Defendants contested the suit by filing written statement denying all the averments and allegations made by the Plaintiffs. Objection is raised with regard to the maintainability of the suits under Section 487 of the Bombay Provincial Municipal Corporation Act. It is claimed in RCS No. 554 of 2005

that the constituted attorney of Digambar son of Mahadu had filed suit for injunction bearing nos.722/1999, which came to be dismissed on 16.02.2002. The claim of Plaintiffs about ownership and possession of the Plaintiff over the suit lands is denied by defendant. It is also claimed that suit land was never reserved for aerodrome but it was acquired for the purpose of construction of labour colony. According to Defendant, an award of acquisition was also passed vide outward no. 144 dated 08.06.1356 and the compensation of the land was also paid to the respective owners who had accepted the same. It is claimed that suit lands vest with the Defendant and Plaintiff has no right over it.

5. Learned Counsel for the Plaintiffs submit that the trial Court as well as First Appellate Court have committed error in not appreciating the pleadings and evidence on record. It is his main contention that on the face of it the award sought to be relied on is bogus, as in 1356 Fasali i.e., in year 1946, official language of the State of Hyderabad was Urdu and hence, question of passing of any award (Exh. 74/64/55 in three suits) in Marathi language does not arise. It is

his further contention that the names of the Plaintiff are mutated in the record of Grampanchayat, which is more than sufficient evidence to indicate that Plaintiff are the owners and in possession of the suit properties. To support the submissions that decree cannot be passed on inadmissible evidence, reliance is placed on judgment of this Court in case of *Subhash Limbaraj Mahandule Vs. Pandharinath Chimaji Salunke, 2019 (6) Mh.L.J. 397.*

6. Learned Counsel for the Defendants opposed the said contention by submitting that in order to seek any injunction Plaintiffs are required to prove their ownership and possession over the suit property. Attention of the Court is drawn to the fact that the Plaintiffs in RCS No. 553/2005 did not even examine themselves in order to prove the same. It is submitted that though now it is sought to be argued the genuineness of the Land Acquisition award, however, in this regard no objection was raised during the course of the trial nor it was ever claimed that it is fabricated document. It is his submission that in the Second Appeals questions of fact cannot be gone into.

7. Since suits are filed for perpetual injunction and in order to succeed in seeking such injunction, law mandates the Plaintiff to plead and prove title as well as possession over the suit property. In the event, Plaintiff is unable even to prove the possession thereon, he would not be entitled to seek any injunction with regard to the suit property. Perusal of pleadings and evidence on record supports the findings recorded by both Courts in this issue. For want of any perversity, this Court finds no reason to cause interference therein.

8. There is ample evidence on record which indicates that the suit properties were acquired for different purpose than the one claimed by the Plaintiff. Exh. 74/65/51 is an award passed in respect of the suit properties. Record does not indicate any objection being raised by the Plaintiff with regard to its genuineness. In fact, no objection was raised before the trial Court for the purpose of exhibiting the document. As rightly pointed out by the learned Counsel for Defendant that now it is not open for the

Plaintiff to raise challenge to the document for the first time in these second appeals. No foundation has been laid before Trial Court. A challenge to the said document, since not pure question of law and it being mixed question of facts and law, cannot be permitted to be raised for the first time in Second Appeal.

9. Having regard to facts and circumstances of the case, this Court finds no reason to disturb concurrent findings recorded by the trial Court as well as First Appellate Court. Resultantly, Appeals deserves to be dismissed for want of involvement of substantial question therein. Accordingly, Appeals stand dismissed.

10. Pending applications are also disposed of.

(R. M. JOSHI, J.)

Malani