

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 681 OF 2019
WITH
CIVIL APPLICATION NO. 1268 OF 2019**

Mr. Bhiku Ganpat Jagtap V/S. Eknath Genu Jagtap (since deceased) Through His Legal Heirs and representatives Anusaya Eknath Jagtap & Ors.	}	..Appellant
	}	..Respondents

Mr. Aloukik Pai a/w. Mr. Varad Jadhav, Ms. Priyanka Rammamurthy, *for the Appellant.*

Mr. Pradeep Shivai Gole, *for Respondent Nos.1A to 1G, 2B, 2D, 2E and 3.*

CORAM : SANDEEP V. MARNE, J.

Dated : 22 March 2024.

P.C. :

1) By this Appeal, the Appellant challenges the Judgment and Decree dated 2 January 2019 passed by the District Judge-4, dismissing Regular Civil Appeal No.83/2013 and confirming the Decree dated 29 January 2013 passed by the Civil Judge Junior Division, Medha in Regular Civil Suit No. 36 of 2001.

2) It appears that larger portion of land of late Eknath Genu Jagtap and Bhiku Kushaba Bhilare was acquired by the Government for Irrigation

Project. The possession of land was taken by the original owners. It appears that by way of government contract for tenure of 11 months, the Appellant was allowed to cultivate by way of drip irrigation smaller portion of land admeasuring 73 Ares on two occasions in the year 1998 and 2007. Both, Eknath Genu Jagtap and Bhiku Kushaba Bhilare/their legal heirs as well as the Appellant claimed possession of the land and sought to injunct each other by filing their respective suits bearing Regular Civil Suit No. 25/1998 and Regular Civil Suit No. 36/2001 respectively. The suit filed by the original owners i.e. Regular Civil Suit No. 25/1998 has been dismissed. On the contrary, Appellant's Regular Civil Suit No. 36 of 2001 came to be decreed by the Trial Court restraining the original land owners (Defendants therein) from interfering with Appellant's possession of the suit property. Aggrieved by the common decree dated 29 January 2013 passed in Regular Civil Suit No. 25/1998 and Regular Civil Suit No. 36/2001, the Original Owners i.e. legal heirs of Eknath Genu Jagtap and Bhiku Kushaba Bhilare filed Regular Civil Appeal Nos. 83 and 84 of 2013. By the impugned Decree, the first Appellate Court has dismissed Regular Civil Appeal No. 84 of 2013, which was in respect of dismissal of Regular Civil Suit No. 25/1998. So far as Regular Civil Appeal No. 83 of 2013 *qua* Regular Civil Suit No. 36 of 2001 is concerned, the same allowed and Appellant's Regular Civil Suit No. 36 of 2001 is dismissed.

3) I have heard Mr. Pai, the learned counsel appearing for the Appellant and Mr. Gole the learned counsel appearing for Respondent Nos.1A to 1G, 2B, 2D, 2E and 3 i.e. for heirs of Eknath Genu Jagtap and Bhiku Kushaba Bhilare.

4) According to Mr. Pai, Appellant is an authorized entrant on the suit property and is found to be in possession concurrently by both the Courts. That he is in possession for considerable period of time and that therefore he is entitled to seek injunction not just against the Government but atleast *qua* Defendants in his suit. He would rely upon **Kapildeo Rai Versus. Har Narain Ahir and Ors.**¹, **Ramsunder Rai and Ors. V/s. Ramasray Rai and Ors.**² and **Santa Singh and Ors. Versus. Rajinder Singh and Ors.**³ in support of his contention that in respect of alluvial land, which is submerged for three months in a year, the possession of the possessor is not treated as disturbed. He therefore submits that the first Appellate Court has created an error in arriving at a conclusion that the Appellant's possession is disturbed every year on account of submerging of the land.

5) In my view, the very claim of the Appellant about possession of the suit property itself is baseless. Appellant was permitted to enter upon the suit property for fixed tenure of 11 months on two occasions in 1998 and 2007. Mere grant of entry/license/contract for tenure of 11 months, did not make the Appellant possessor in respect of the land. Despite grant of license to Appellant, the Government of Maharashtra continued to be in possession of the suit land. It appears that the Appellant has apparently continued to remain on the suit land despite expiry of the last contract issued in the year 2007. It is for the Government to take appropriate action for removal of the Appellant from the suit land. However, mere inaction on the part of the

1 1964 SCC Online All 318

2 1959 SCC Online Pat 49

3 1965 ILR Vol. XVIII-(2) 97

Government to take action for ejection of the Appellant does not make him a person in settled possession of the suit land.

6) In my view, it is not even necessary to go into the issue of disturbance of possession in respect of submerged land. However, since Mr. Pai has relied upon three judgments in support of his contention, one of the judgments apparently goes against the case of the Appellant. In **Kapil Dev Rai**, the learned Single Judge of the Allahabad High Court has held that submersion of land under water has the effect of restoration of possession of original owner and that the possession of the person who was wrongfully occupying it must be discarded as having come to an end. Be that as it may. It is not even necessary to go into the issue of continuation of possession of Appellant during submersion of the land every rainy season. The Appellant was merely granted license/contract for fixed tenure and cannot be said to possess suit land in any manner. Failure of Appellant to withdraw from occupation of land at the end of tenure of licence granted by Government does not mean that his possession becomes adverse to that of Government. Therefore, he cannot be treated in settled possession of the suit land as to claim decree for injunction against the Defendants in the suit. In the present case both the rival parties have sought to use the court machinery for seeking orders of injunction against each other when none of them have any rights *qua* the suit properties. Therefore none of them are entitled to seek any injunctive reliefs.

7) At the same time, rejection of injunction in favour of the Appellant does not mean that Defendants in Regular Civil Suit No. 36 of 2001 would

get a license to occupy the suit land. Therefore, rejection of the Second Appeal cannot be treated as upholding of rights of the Defendants in Regular Civil Suit No. 36 of 2001 in any manner. Infact, the State Government must take necessary action for taking back occupation of the suit property and ensure that dismissal of Appellant's Suit No. 36 of 2001 does not result in a situation where the Defendants in that Suit misuse the decree so as to enter upon the suit property in an unauthorized manner.

8) No substantial question of law is involved in the Appeal. The Second Appeal is accordingly rejected.

9) After the order is pronounced, Mr. Pai, would request for continuation of ad-interim Order dated 6 November 2019 passed by this Court. Considering the nature of findings recorded while rejecting the Second Appeal, the prayer for continuation of the ad-interim relief is rejected.

10) With rejection of Second Appeal, the Civil Application also stands disposed of.

SANDEEP V. MARNE, J.