

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

**SECOND APPEAL NO. 155 OF 2019
WITH
CAS/1477/2018 IN SA/155/2019**

Tanaji Bajrang Aawtade And Ors. ...Appellants
Versus
The State of Maharashtra
Thr. Collector, Solapur And Ors. ...Respondents

....

Mr. Rajesh Datar, i/b. Mr. Rohit Joshi, for Appellant.
Mr. Ashok Tajane, a/w. Mr. Yogesh Thorat for Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATED : 21 MARCH 2024.

P. C. :

By this Appeal, Appellants challenge Judgment and decree dated 17 September 2018 passed by District Judge, Solapur in Civil Appeal No.90 of 2019. The First Appellate Court has dismissed the Appellants' Appeal and has confirmed the decree dated 30 November 2015 passed by Civil Judge, Senior Division, Solapur in Regular Civil Suit No.528 of 2012.

2. Plaintiffs instituted suit seeking a declaration that they are owners and occupiers of the suit property on account of lapsing of acquisition of Defendant No.1. Plaintiffs further sought a declaration that the sale-deed executed by Defendant No.2 in favour of Defendant No.3 is not binding on Plaintiffs. It appears that the suit property came to be acquired by Defendant No.1-State Government vide award passed in the year 1986. After acquisition of the suit property, the same came to be allotted to Defendant No.2, who in turn executed sale-deed in

favour of Defendant No.3. It is Plaintiffs' case that though the property was acquired on paper, possession thereof was never physically and actually taken from Plaintiffs. Relying on Section 16 of the Land Acquisition Act, 1894 Mr. Datar would contend that since the possession of the suit property was not taken from Plaintiffs vesting of the land in the State Government did not take place under provisions of Section 16 of the Act. He would therefore submit that since land did not vest in the State Government, same could not be allotted to Defendant No.2. He would submit that Plaintiffs continued to be in possession even after paper acquisition of the suit property and in such circumstances, the Trial Court ought to have decreed the suit and dismissed the counter claim filed by Defendant Nos.2 and 3.

3. Plaintiff took a specific stand in the plaint that though the land was acquired, possession thereof was never taken from the Plaintiffs. Defendant No.1-State Government filed a written statement contending that the possession of the land was indeed taken from Plaintiffs. Defendant No.1 examined witness who led evidence that possession of the suit land was taken from Plaintiffs. He further deposed that while allotting land to a beneficiary, actual and physical possession of the land always is handed over to said beneficiary and that in present case, physical possession of the land was actually handed over to Defendant No.2. Though Mr. Datar has attempted to rely on cross-examination of the said witness, in my view, there is nothing in the cross-examination which seems to support Appellants' case. Specific deposition is given by him that possession of the land was actually taken from Plaintiffs.

4. Mr. Datar has submitted that Plaintiffs have never lost possession and that they continued to remain in possession despite

acquisition and therefore Trial Court could not have decreed the counter claim filed by the Defendant Nos.2 and 3. He has submitted that the fact that the Defendant Nos.2 and 3 were required to file a counter claim seeking recovery of possession contains an inbuilt admission that they are not in actual possession. In my view, once Plaintiffs failed in seeking declaration, they any declaration of lapsing of reserve, he lost title in respect of the suit property. Therefore their alleged settled possession over the suit property could recovered by following due process of law by the true owner. On account of allotment of the land in favour of Defendant No.2 and on account of sale deed executed in favour of Defendant No.3, Defendant Nos.2 and 3, in their capacity as a true owners of the land, were entitled to seek recovery of possession from Plaintiffs, who are in possession without any title.

5. After considering overall conspectus of the case, no serious error can be traced in the Orders passed by the Trial and First Appellate Court. No substantial question of law is involved in the Second Appeal. The Second Appeal is accordingly **dismissed**. Since the Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

6. After the Order is pronounced, Mr. Datar would request for continuation of ad-interim relief operating in favour of the Appellants for a period 8 weeks. Mr. Tajne, the learned counsel appearing for Respondent-Original Defendant No.3 would oppose the prayer. Considering the findings recorded while rejecting the Appeal, prayer for continuation of the interim order is rejected.

SANDEEP V. MARNE, J.

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