

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.161 OF 2021
WITH
SECOND APPEAL NO.162 OF 2021

Rajesh Prabhakar Narkar

....Appellant

V/S

Bablya Sakharam Gorule & Ors.

....Respondents

...

Mr. Sanskar Marathe for the Appellant.

Mr. R.D. Suryawanshi for the Respondent No.1.

...

CORAM: SANDEEP V. MARNE, J.

DATE : FEBRUARY 23, 2024.

P.C.:

1 The Appellant has filed these two Second Appeals challenging the common judgment and order dated 16 September 2019 passed by District Judge-1, Ratnagiri, in Regular Civil Appeal Nos.65 of 2014 and 66 of 2014 thereby confirming the judgment and decree dated 29 March 2014 passed by the Civil Judge Junior Division, Rajapur, in Regular Civil Suit No.45 of 2003.

2 Plaintiff instituted Regular Civil Suit No.45 of 2003 in respect of suit property bearing Gat Nos.226A/1 and 226A/2 situated at village Pachal seeking perpetual and mandatory injunction against the Defendants. Plaintiff claimed his possession in respect of suit property.

He claims that there was a separate property bearing Gat No.226B in which Defendant No.1 claimed tenancy and filed an application under section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**) in which he was declared as tenant in respect of Gat No.226B. It was Plaintiff's case that though tenancy rights of the first Defendant were recognized in respect of Gat No.226B, his name was erroneously mutated in Gat No.226A by mutation entry No.516. That the first Defendant got mutated his name in the land in respect of the Gat No.226A taking benefit of the error so committed. Plaintiff accordingly filed Appeal challenging order dated 16 April 2002 passed under section 32G of the Act. Plaintiff claimed that during pendency of the said Appeal, Defendant started disturbing Plaintiff's possession. That the land bearing Gat No.226A, after acquisition was divided into Gat No.226A/1 and 226A/2. That while Gat No.226A/1 remained in the name of Plaintiff and Defendant Nos.2 to 5, the first Defendant started taking undue advantage of recording his name in respect of Gat No.226A and started disturbing the Plaintiff's possession over suit property. It is Plaintiff's case that during pendency of the suit, the first Defendant constructed a house on the suit property which necessitated amendment of the Plaint and Plaintiffs also sought prayer for removal of construction.

3 Defendant appeared in the suit and in addition of filing a Written Statement, also filed a counter-claim seeking injunction against Plaintiff from causing obstruction to his possession over House No.412.

4 The Trial Court proceeded to dismiss Plaintiff's suit and decreed the counter-claim of the Defendant No.1 restraining Plaintiff from disturbing possession of Defendant No.1 in respect of House No.412.

5 Aggrieved by the Trial Court's decision Appellant filed Regular Civil Appeal Nos.65 of 2014 and 66 of 2014 challenging decisions in suit and counter-claim. By common judgment dated 16 September 2019, the First Appellate Court has proceeded to dismiss both the Appeals filed by the Appellant.

6 I have heard Mr. Marathe, the learned Counsel appearing for the Appellant and Mr. Suryawanshi, the learned Counsel appearing for Respondent No.1.

7 After having considered submissions canvassed by the learned Counsel appearing for parties, it is seen that Plaintiff's suit was for injunction simplicitor. He did not seek a decree for eviction of first Defendant based on title to the suit property. He merely claimed possessory rights in respect of the suit property and sought to protect his possession. After considering the evidence, however, the Trial Court arrived at a finding that the house of Defendant No.1 existed on the suit property for considerable period of time. It appears that an assessment extract pertaining to the year 1978-79 was produced at Exhibit-159 showing long standing possession of the first Defendant over the suit

property. If Defendant had already built a house on the suit property and if Plaintiff wanted his ejectment therefrom, it was necessary for the Plaintiff to file a suit for recovery of possession based on title. Instead of doing so Plaintiff choose to file a suit seeking only injunction against Defendant No.1. To claim such injunction, it then became incumbent for Plaintiff to prove that he alone was in possession of the suit property and that the first Defendant was merely disturbing it. He failed in his attempt as the evidence on record proved settled position of first Defendant in respect of part of the suit property.

8 Mr. Marathe made strenuous efforts to impress upon me that the first Defendant had no semblance of title in respect of suit properties bearing Gat Nos.226A/1 and 226A/2. According to him the claim of tenancy raised by the first Defendant was in respect of Gat No.226B. He also questioned correctness of findings recorded by Trial Court about Gat No.226B being renumbered as Gat No.226A/2. Even if these contentions of Plaintiff are accepted to be correct, the same in fact makes the case of Plaintiff worse. If Plaintiff claimed title in respect of the suit properties and denied title of Defendant No.1 therein, he ought to have filed a suit for declaration of title and recovery of possession. Plaintiff's suit simplicitor for injunction could not have been decreed once the Trial Court arrived at the finding that the Defendant No.1 is in settled possession of house constructed in some portion of the suit property.

9 In my view therefore no serious error can be traced in the orders passed by the Trial Court and First Appellate Court. No substantial question of law is involved in the Appeals. Both the Second Appeals are accordingly rejected.

(SANDEEP V. MARNE, J.)

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