

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

**SECOND APPEAL NO. 726 OF 2023
WITH
INTERIM APPLICATION NO. 584 OF 2024
WITH
INTERIM APPLICATION NO. 831 OF 2024
IN
SECOND APPEAL NO. 726 OF 2023**

Maruti Bala Yadav deceased & Anr. .. Appellants
vs.
The Collector Sangli & Ors. .. Respondent

...
Mr. B. R. Mandlik a/w., Rati S. Sinhasane, for the Appellants.
Ms. Tanaya Goswami, for the Respondents.
...

CORAM: SANDEEP V. MARNE, J.
DATE : 23rd JANUARY, 2024.

P. C.:

1. By this Appeal, the Appellants challenge Judgment and Order dated 29th August, 2023 passed by District Court, Sangli dismissing Regular Civil Suit No.202 of 2013 and thereby confirming the Decree dated 25th February, 2013 passed by Civil Judge, Senior Division, Sangli.

2. Plaintiffs have instituted Regular Civil Suit No. 311 of 2004, seeking declaration that a suit property bearing Survey No. 440/Gat No. 1625, village Kadepur, Taluka-Kadegaon, District-

Sangli is in their possession and seeking injunction against the Defendants for causing obstruction to Plaintiffs' possession of suit property. Government Authorities were impleaded as Defendants to the Suit. The trial Court refused to believe that the suit property is in possession of the Plaintiffs and proceeded to dismiss Regular Civil Suit No. 311 of 2004 by Decree dated 25th February, 2013. The First Appellate Court has confirmed the Decree of the trial Court by dismissing Appellants' Regular Civil Appeal No. 202 of 2013. Aggrieved by the decisions of the trial Court and First Appellate Court, Appellants have filed the present Appeal.

3. I have heard Mr. Mandlik, learned counsel appearing for the Appellants and Ms. Goswami, learned AGP appearing for Respondent Nos. 1 to 3.

4. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Plaintiffs' claim of possession over the suit property is premised on entry made in the revenue record pertaining to the year 1943-44 and 1944-45. The trial Court has however held that in the cultivation column of the suit property, after the year 1953-54, the entry "Nil" is made in cultivation column and entries "सरकारी बंगल्याकडे" and "स्टोर कडे" are made in the revenue records. Based on the revenue entries, the trial Court and the First Appellate Court have refused to believe that Plaintiffs are in possession of the suit

property since the year 1943-44. Another factor considered by the trial Court and the First Appellate Court is handing over of possession of the suit property in favour of the Plaintiffs through auction conducted in the year 1971. Before I consider the exact effect of handing over of possession through that auction, it must be borne in mind that the very factum of taking over possession of the suit property through auction conducted in the year 1971 would belie the theory of Plaintiffs' possession of the suit property since the year 1943-44. If they were indeed in possession of suit property from 1943-44, there was no question of handing over possession once again in the year 1971.

5. Turning to the exact effect of the letter dated 3rd June, 1971, it is seen that the auction was conducted by the Deputy Engineer, Building and Project, Sub Division, Vita for the purpose of cultivating the suit property only for the year 1971. The subject of the letter dated 3rd June, 1971 clearly states that the auction was for the purpose of granting land for cultivation only for the year 1971. Therefore, letter dated 3rd June, 1971 cannot be construed to mean as if the land was given for cultivation to the Plaintiffs for perpetuity. No doubt, Plaintiffs have relied upon revenue receipts in support of their contention that the land revenue in respect of the suit property has been paid by the Plaintiffs up to the year 1981. However, mere deposit of land revenue for few years would not ipso facto legalise the possession of Plaintiffs over the suit

property which they were supposed to possess only during the year 1971.

6. There is yet another factor which needs to be considered on the basis of letter dated 3rd June, 1971. Plaintiffs' claim of adverse possession is clearly demolished by letter dated 3rd June, 1971. The said letter clearly shows that possession of Plaintiffs' is of permissive nature. Thus, the Plaintiffs were put in possession by letter dated 3rd June, 1971 only for the year 1971. If they continued to remain continue in possession of property in violation stipulation of the letter, the same would not entitle them to claim title in the property by setting up a plea of adverse possession. Also of relevance is the fact that such possession, at the highest continued till the year 1981 as according to the case of the Plaintiffs, the revenue in respect of the suit property was not paid by them after the year 1981.

7. Reliance is sought to be placed on letter dated 23rd November, 2005 for the purpose of drawl of inference of possession over the suit property by Plaintiffs. I have seen the letter dated 23rd November, 2005. It was issued apparently on account of decision of Regular Civil Suit No. 391 of 1998. Perusal of written statement filed by the Defendant Nos. 1 to 3 would indicate that Regular Civil Suit No. 391 of 1998 was filed by Plaintiffs in respect of another land bearing survey No. 1178 which also fall in

the ownership of the State Government. Since, the said suit was dismissed, the Assistant Engineer, wrote letter dated 23rd November, 2005 to the Plaintiffs and unnecessarily called upon Plaintiffs to remove cattle shed and fodder stock from the suit property. Therefore, letter dated 23rd November, 2005 cannot be construed to mean as if Plaintiffs remained in possession of the suit property as on 23rd November, 2005. In fact, panchanama dated 11th September, 2003 relied upon by Plaintiffs themselves clearly shows that the land remained uncultivated as on 11th September, 2003.

8. I have also gone through the photographs placed before the trial Court, which shows existence of mere temporary cattle shed and fodder stock. Mere existence of such temporary cattle shed or fodder stock cannot entail possession of the entire suit property by Plaintiffs.

9. After evaluating the entire evidence on record the trial Court has recorded finding of fact that Plaintiffs do not possess the property nor their alleged possession is adverse to the title of the State Government. No substantial question of law is involved in Appeal. The Appeal is accordingly dismissed.

10. All Interim Applications are disposed of.

SANDEEP V. MARNE, J.