



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

12 SECOND APPEAL NO. 239 OF 2023

Bajirao Karbhari Bhangude

VERSUS

Haribhau Kashinath Bhangude And Others

...

Advocate for Appellant : Mr. Rahul R. Karpe

...

WITH

CIVIL APPLICATION NO. 12434 OF 2023 IN SA/239/2023

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 22, 2025

ORDER :-

1. The appellant/original defendant no.2 impugns the judgment and decree dated 9.11.2022 passed by the District Judge, Ahmednagar in RCA No.468 of 2015 there by upholding the judgment and decree dated 31.10.2015 passed by the C.J.J.D., Pathardi District Ahmednagar in R.C.S. No198 of 2008.

2. The respondent no.1 instituted a suit for removal of encroachment and recovery of possession as well as perpetual injunction in respect of the suit property bearing gat no.145/4 and 145/7 situated at village Adgaon, Tq. Pathardi, District Ahmednagar. The plaintiff contends that he is owner and possessor of the ($\frac{1}{2}$) one half share of the suit property, however, defendant nos.2 to 4 have encroached on his share. He carried measurement of the suit property through cadastral surveyor and found encroachment to the extent of 8R area by

defendant nos.2 to 4. Consequently, plaintiff sought reliefs as prayed.

3. Defendant nos.2 to 4 refuted claim of the plaintiff and denied the factum of encroachment. They contend that, in fact, plaintiff is owner and possessor to the extent of $\frac{1}{4}$ th share in the suit property and they are owner and possessor to the extent of $\frac{3}{4}$ th share in the suit property, however, plaintiff in collusion with the Talathi made false entries in the revenue record and raised false claim. Pleadings in the suit depict that, in fact, plaintiff raised claim against the original defendant no.1 in respect of gat no.145/4. The defendant no.1 admitted such claim. Accordingly, the suit was decreed against him on admission. The defendant nos.2 to 4 contested claim to the extent of land from gat no.145/7. The Trial Court framed issues based on pleadings of the parties and concluded that the plaintiff is owner to the extent of one half share in the land gat no.145/7 and defendant nos.2 to 4 have encroached on the area owned by the plaintiff. Consequently, passed the decree for possession and injunction. Aggrieved defendant no.2 filed RCA no.468 of 2015 before the District Judge, Ahmednagar which came to be dismissed upholding the judgment and decree by the Trial Court.

4. Mr. Karpe, learned advocate appearing for the appellant submits that plaintiff could not prove his title over $\frac{1}{2}$ share in the land gat no.145/7. His claim is based on mutation entry, which cannot be considered as the document of title. He would further invite attention of this Court to cross-examination of the plaintiff, where plaintiff admits that

defendants are in possession of the suit property since 1981. According to him, defendants have acquired ownership by way of adverse possession, however, this aspect is not properly dealt with by the Courts below.

5. I have considered the aforesaid submissions and also perused the findings recorded by the Courts below. As regards to objection as to title plaintiff, admittedly, land gat no.145 is ancestral property of the plaintiff. It was divided in several parts. Gat no.145/7 has been mutated in his name depicting 1/2 share. The defendants could not bring any counter evidence to discard ownership of the plaintiff in the ancestral property to the extent of one half share. Except their contention that they are owners to the extent of 2/3rd share in land gat no.145/7, no evidence is brought on record by them. Consequently, both the Courts have concurrently held that plaintiff is owner of 1/2 share in gat no.145/7. Concurrent findings of the fact recorded by the Courts below is based on the material and does not require interference in this appeal.

6. So far as another issue as regards to adverse possession of defendants is concerned, they rely on admission of the plaintiff that defendants were in possession of the suit property since 1981. The Trial Court as well as the Appellate Court dealt with the aforesaid admission and concluded that even assuming long standing possession of the defendants over the suit property, they have not established the claim as to adverse possession. Further defendants employed inconsistent plea, once they are claiming ownership of 3/4th share in the suit land and on the other hand trying to establish their title by

way of adverse possession. The Trial Court as well as the Appellate Court concurrently held that defendants could not establish their adverse possession as necessary ingredients for upholding such claim is not proved by them by employing necessary evidence and pleadings. No fault can be found in the concurrent findings recorded by the Courts below. Hence, no substantial question of law arises in this second appeal. Second appeal stands **dismissed**. No costs. Pending civil application also stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

...

aaa-