
(2010) 05 BOM CK 0002
In the Bombay High Court
Case No : Second Appeal No. 545 of 1989

Maroti Jairam Kadam

APPELLANT

Vs

Mahadu Govind Kadam and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2011) 1 BomCR 442

Hon'ble Judges : Borkar P.R., J

Bench : Single Bench

Advocate : P.G. Godhamgaonkar, for the Appellant; V.D. Patnoorkar, for the Respondent

Final Decision : Allowed

Judgement

Borkar P.R., J.—This appeal is preferred by original Plaintiff whose suit for perpetual injunction simplicitor bearing R.C.S. No. 482 of 1983 was decreed by the learned Civil Judge, Junior Division, Nanded on 22.2.1985, but which judgment and decree was reversed by learned III Additional District Judge in R.C.A. No. 84 of 1985 decided on 7.10.1989.

2. Briefly stated, it is the case of present Appellant-Plaintiff that Respondents-Defendants were the owners of southern side 2 hectare 8 R. Portion of land out of block No. 52 of village Kondha, Taluka and District Nanded. In 1982, Respondents-Defendants gave the said land on crop share basis for a period of five years i.e. from 1982-83 to 1987-88 to the Appellant-Plaintiff. Thus, the Plaintiff was put in possession of the suit property. Since Respondents-Defendants obstructed possession of the Plaintiff, suit was filed by the Plaintiff against Defendants for perpetual injunction.

3. Respondents-Defendants appeared in the suit and filed written statement at Exh. 13. They denied that the land was given to the Plaintiffs on crop share basis for a period of five years as claimed by the Plaintiff. Execution of Batai Patra was also denied and delivery of possession to the Plaintiff was also challenged.

Defendants denied to have put the Plaintiff in possession of the suit property. According to Defendants they were in possession of and were cultivating the suit property. On the basis of these pleadings, they prayed for dismissal of the suit.

4. The trial Court came to the conclusion that the Plaintiff was in possession and that his possession was lawful and since there was obstruction by Defendants to the possession of the Plaintiff, Plaintiff was held to be entitled to injunction. The first Appellate Court framed only two points for consideration and answered the same in the negative which are reproduced below:

Thus the appeal before the District Court by Defendants was allowed and the decree of the trial Court in favour of the Plaintiff was set aside.

5. It may be noted that the District Court presumed that Plaintiff was in possession of the suit property as can be seen impliedly from point No. 2 as framed which is reproduced above. However, it answered the question whether the Plaintiff had right to remain in possession permanently in the negative on the ground that Bataipatra is not proved.

6. This appeal is admitted by order dated 18.12.1989 on substantial questions of law involved in ground Nos. 3, 4, 7, 8, 10 and 11 of the appeal memo. However, at the time of arguments, learned Counsel of the Appellant stated that this appeal can be disposed of on one question of law, viz. whether, when the Appellant-Plaintiff has been in settled possession of the suit property legally or otherwise, Respondents-Defendants can forcibly evict the Plaintiff without following due process of law and submitted that this Court should answer the said question in the negative and allow the appeal and direct that the Plaintiff-Appellant be not evicted except by due process of law. For the purpose, learned Advocate relied upon the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, and more particularly paragraphs 8 and 9 thereof.

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owners shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession....

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Others Vs. Delhi Administration, , Puran Singh and Others Vs. The State of Punjab, and Ram Rattan and Others Vs. State of Uttar Pradesh, . The authorities need not be multiplied. In Munshi Ram case, it was held that no one, including the true owner, has a right to dispossess

the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner....

7. So, following substantial question of law is reformulated as below and Advocates of parties are heard thereon.

Whether the Appellant-Plaintiff proved that he had been in settled possession of the suit property and as such, entitled to injunction against Respondents-Defendants?

8. Learned Counsel for respective parties, together, have taken me through entire record and judgments of the trial Court, so also of the District Court. The trial Court has come to the conclusion that after considering "Bataipatra" (Exh. 29) and oral evidence on record, Plaintiff was found in actual possession of the suit property. It also relied upon revenue record for the year 1983-84 produced with list Exhibit 4/2. Plaintiff's possession was shown even in revenue record for the period 1984-85 as can be seen from Exhibit 39.

9. The first Appellate Court framed points for consideration as stated above. If we consider paragraph 5 of the judgment of the District Court, the same makes clear it clear that what was argued on behalf of Defendants-Appellants before the District Court was that the Plaintiff (Respondent before the District Court) was not entitled to continue to be in possession of the suit land and that tenancy rights were not declared by the Competent Court and, therefore, Plaintiff cannot claim protection from Civil Court. It was also argued that the V.F. 7x12 extracts and the agreement are false and inadmissible in evidence.

10. The learned Counsel for the Appellant-Plaintiff submitted that the order of injunction continued against the Respondents-Defendants after it was passed by the decree of trial Court passed on 22.2.1985, by way of interim reliefs. He particularly referred to order passed on 18.12.1989 in Civil Application No. 2972 of 1989 by this Court, whereby interim relief in terms of prayer Clause (B) was granted which is to the effect that pending hearing and final disposal of the appeal, Respondents-Defendants be restrained by an order of injunction from interfering in possession of the Petitioner-Plaintiff over the suit land. That order was confirmed on 2.9.1991 and the said civil application was disposed of. It is, therefore, clear that, the injunction has remained in force from 18.12.1989 till this date.

11. Considering above circumstances and the ratio laid down in the case of Rome Gowda (supra), in my opinion, this appeal will have to be allowed. Accordingly, this second appeal is allowed and disposed of. The judgment and decree of the first Appellate Court is set aside and that of the trial Court is restored. Appellant is entitled to injunction until he is evicted by due process of law.

It is, however, made clear that this Court has not observed anything on the question of legality or illegality of possession of the Appellant-Plaintiff. The

second appeal is decided only on the basis of settled possession of the Plaintiff as on the date of the suit. This Court cannot decide question of tenancy raised by the Appellant-Plaintiff.