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**(1985) 07 BOM CK 0005**

**In the Bombay High Court**

**Case No :** Second Appeals No's. 148 and 149 of 1983

Nimba Bhuta Koli

APPELLANT

Vs

Barku Zamarya Bhil and another

RESPONDENT

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**Date of Decision :** 03-07-1985

**Acts Referred:**

Bombay Inferior Villages Watans Abolition Act, 1958 — Section 4  
Bombay Revenue Jurisdiction Act, 1876 — Section 5

**Citation :** (1986) MhLj 333

**Hon'ble Judges :** K. Madhava Reddy, C.J

**Bench :** Single Bench

**Advocate :** Navin B. Shah for B.B. Panse and V.N. Kaulgekar, for the Appellant;  
P.N. Karlekar, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K. Madhava Reddy, C.J.—These two second appeals filed by the plaintiffs arise out of Regular Civil Suit No. 77 of 1976 and Regular Civil Suit No. 78 of 1976, on the file of the Civil Judge. Junior Division, Shahada.

2. The subject matter of Second Appeal No. 148 of 1983 which arises out viz. Second Appeal No. 149 of 1983 is an extent of 3 Acres 7 Gunthas of land in Survey No. 63 corresponding to Gat No. 6 of the same village.

3. The plaintiffs sought perpetual injunction restraining the defendants from interfering with their peaceful possession over the suit lands. It is their case that these lands were originally Inam Lands. On abolition of Inams they were re-granted to them on payment of the occupation charges u/s 4 of the Bombay Inferior Village Watans Abolition Act, 1958. Under an Order dated 23-11-1967 issued by the Tahsildar, Shahada, pursuant to the Commissioner of Bombay's Order No. 865-WTN-B-1290 dated 17th September 1967 Exhibit 23, 5 Acres 6 Gunthas, in Survey No. 60 were re-granted to the plaintiffs in Reg. Civil Suit No. 77 of 1976 and 8 Acres 7 Gunthas were re-granted to the plaintiff's in Survey No. 63 in Regular Civil suit No. 78 of 1976. They have been in possession of the

lands ever since, but the defendants/respondents started unauthorisedly interfering with their possession.

4. It is the case of the defendants that these lands were not Inam lands, but were unoccupied lands. The Tahsildar by his order dated 27th April, 1976 allotted each of the defendants 3 acres 7 gunthas in Survey No. 67. In pursuance of these allotments, they entered into possession of the land and are cultivating the same. The plaintiffs are not in possession and are not entitled to an injunction. They also took up the plea that the Civil Court has no jurisdiction to try the suit.

5. Even while holding that the plaintiffs were in possession of the suit lands on 26th April, 1976 and the Court had jurisdiction to try the suits, both the Courts have dismissed the suits. The trial Court, however, had come to the conclusion that the former Inam lands cultivated by the plaintiff's ancestors became Government lands available for allotment on abolition of Inams and that possession was handed over to the defendants by the Circle Officer on 27th April, 1976. The Appellate Court found that the lands were re-granted to the plaintiffs under the Inferior Village Watans Abolition Act and were rightly in possession of the plaintiff's. But the Appeal Court was of the view that the legality of the order passed by the Revenue Officers cannot be questioned in Civil Court and accordingly dismissed the Appeal.

6. The finding of the trial Appellate Court that the land in question also allotted to the plaintiffs under the Maharashtra Inferior Village Watans Abolition Act, 1958 must be accepted as correct, in view of Exhibit 23 dated 23-11-1967. Under that letter the entire extent of 15 acres 34 gunthas in Survey No. 63 was unequivocally allotted to the plaintiff in one suit and another and the entire extent of 10 Acres 11 Gunthas in Survey No. 60 in favour of the plaintiffs in the other suit and some others. Thus the total extent in Survey No. 63 and Survey No. 60 were re-granted as early as in 1967 to the plaintiffs herein and to some others, who are not the defendants herein. The lands having been re-granted on payment of the price mentioned therein and the amount having been paid, the re-grantees became the owners of the suit lands. On and from 23-11-1967 there was no land in Survey Nos. 60 and 63 which could be treated as unoccupied land and available for allotment. No doubt, the Tahasildar purported to allot 3 Acres of land in Survey No. 60 and 3 Acres 7 Gunthas of land to each of the three defendants in Survey No. 63 in Regular Civil Suit No. 78 of 1976. But, that allotment cannot have any legal effect and in any case cannot affect the rights of the plaintiffs. Only the Government land which was unoccupied and was available for allotment could have been allotted to the defendants. The total extent of Survey No. 60 being 10 Acres 11 Gunthas and Survey No. 63 being 15 Acres 34 Gunthas and that having been re-granted to the successors and legal heirs of the Inamdars, the Government could not have treated this land as unoccupied land and proceeded to allot any portion of the same to the defendants. This allotment is wholly without jurisdiction and does not confer any right, title or interest therein on the defendants. The purported action of the Tahsildar to deliver

possession of the land cannot but be treated as mere make believe proceedings. On the strength of such an allotment, the defendants are not entitled to interfere with the possession of the plaintiffs. The possession is purported to have been delivered to the defendants on 25th April, 1876 and the suit for injunction was filed only two days thereafter on 27th April, 1976. The so called act of delivery of possession is only a make believe proceedings which cannot affect the title or possession of the plaintiffs. The plaintiffs are really entitled to an injunction.

7. The next question is whether the Civil Court has jurisdiction to entertain the suit and whether the Tahsildar was a necessary party. Mr. Karlekar, the learned Counsel for the defendants/respondents, contends that the Tahsildar and the Government were necessary parties to the suit but are not impleaded. According to him, so long as the order dated 25th April, 1976 stands, the Civil Court cannot grant any relief. Even if that order is to be set aside, the Tahsildar and the Government should be made parties to the suit. I do not find any force in this contention. It is the defendants who are trying to interfere with the possession of the plaintiffs and the suit for injunction, can, therefore, be properly filed by a person in possession to restrain such interference. The plaintiff in such a case is not obliged to implead all the persons and authorities on the strength of whose orders the defendants seek to interfere. May be, the defendants thought that the orders of the Tahsildar give them the right to interfere. If that be so, it is for the defendants to establish that the Tahsildar had the authority to allot the land. In respect of land already re-granted to the plaintiffs under the said Act, the Tahsildar had no authority to allot the same, and his order does not confer any right on the defendants. The order of the Tahsildar itself is wholly without jurisdiction, inasmuch as, he could allot only unoccupied land and not the land already re-granted to someone else under this Act. The order being wholly without jurisdiction has to be ignored. Reliance for this contention was placed by the respondents on section 11 of the Bombay Revenue Jurisdiction Act, 1976. Section 11 of the Bombay Revenue Jurisdiction Act, 1976 reads as follows:-

11. Except as otherwise expressly provided in the Maharashtra Land Revenue Code, 1966, no Civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue-officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

All that this section prevents is a suit against the Government without filing appeals provided against the order under law. Section 11 only deals with suits against Government and not against private parties. However, in a suit for injunction merely because the person unauthorisedly interfering with the possession of another relies upon the order of the Tahsildar or the Government, the Bombay Revenue Jurisdiction Act does not require that officer or the Government to be made a party to the Civil suit. Reliance was also placed in this behalf on section 4 of the Bombay Revenue Jurisdiction Act. Section 4, so far as

our present purpose, reads as follows: -

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx

(e) the distribution of land or allotment of land revenue on partition of any estate under Bombay Act IV of 1868 or any other law for the time being in force;

It would be noticed that this provision applies to distribution of land on partition of an estate under Bombay Act IV of 1868 or any other law for the time being in force. The re-grant in favour of the plaintiffs was under the Bombay Inferior Village Watans Abolition Act. The distribution of the land in favour of the defendants too is not pursuant to any partition under the Bombay Act IV of 1868. It was a purported allotment of unoccupied Government lands and not distribution of any land. This provision, in my view, has No. relevance to the question whether the Civil Court has jurisdiction to entertain a suit with which these two appeals are concerned.

8. It would be significant to note that section 5 of the Bombay Revenue Jurisdiction Act, 1876 saves the jurisdiction of the Civil Court, even in respect of matters covered by section 4 to the extent mentioned therein. Inasmuch as discussed above. Section 4 itself does not bar jurisdiction of the Civil Court to entertain a suit for perpetual injunction, it is unnecessary to discuss as to what extent section 5 saves the jurisdiction of the Civil Court even in matters covered by section 4 of the Act. However, it would be pertinent to note that section 6 envisages suits against Revenue Officers but only provides that they shall not be liable to be sued for damages in any Civil Court for any act bona fide done or ordered to be done by them in pursuance of the provisions of any law for the time being in force. That only means that even if the order of the Tahsildar allotting the land to the defendants is illegal and without jurisdiction, the Tahsildar cannot be held liable for damages for such an act and the defendants cannot claim any damages. I, therefore, hold that the Civil Court has jurisdiction to try these suits. The Tahsildar or the Government need not have been impleaded as a party defendants to the suits and the plaintiffs are entitled to an injunction.

9. In the result, these two Second Appeals succeed and are accordingly allowed. There shall be a decree, as prayed for, in each of the two suits viz. Regular Civil Suit No. 77 of 1976 and Regular Civil Suit No. 78 of 1976, but the parties shall bear their own costs throughout.

10. Rule is made absolute in the Civil Application.