

Presented on : 28.12.2007  
Registered on : 28.12.2007  
Decided on : 11.12.2013  
Duration : 05.01.14  
Y. M. D.

IN THE COURT OF CIVIL JUDGE (JUNIOR DIVISION), BALAPUR  
( Presided over by Pravin G.Tayade )

Regular Civil Suit No.01 / 2008

Ex.No. 67

Bhaskar S/o. Sheshrao Jagtap,  
aged about 53 years, occ. : Agril.,  
R/o. Gaigaon, Tq. Balapur, Distt. Akola. .. PLAINTIFFS

-// VERSUS //-

Suresh S/o. Ramjiwan Bagare,  
aged about 36 years, occ. : Business,  
R/o. Wadegaon, Tq. Balapur, Dist. Akola .. DEFENDANT

CLAIM : SUIT FOR DECLARATION AND FOR  
PERMANENT INJUNCTION.

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Shri M.A. Sambare, advocate, for plaintiff  
Shri A.D. Nimbalkar, advocate, for defendant  
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-// JUDGMENT //-  
( Delivered on this 11<sup>th</sup> day of December, 2013 )

01. The plaintiff sues defendant for declaration and permanent injunction.

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02. The factual matrix of the case is as under:-

The plaintiff is owner and possessor of field G.No.631 (S.No.175) total admeasuring 7H 26R out of it 1H 4R of village Gaigaon Tq. Balapur bounded by east-field of Dnyandeo Wankhade, west-field of Indubai Jagtap, north-field of Sheshrao Jagtap and south-field of Solanke (now pond). The above field is hereinafter referred as 'the suit field'.

03. The plaintiff has inherited the suit field in the year 1993. On 22/01/1996 original owner of suit field namely Jaibai has gifted the suit field to him. Since then the plaintiff is in possession of the suit field.

04. On 05/04/2005 the defendant has purchased field to the extent of 60R's from legal heirs of Sakharam Tukaram Jagtap by a registered sale-deed. The said field is located towards western side of the suit field. The defendant has given wrong description of the

field purchased by him styled as the field of the plaintiff to be his field in the said transaction. He has given wrong boundaries of the said field in the sale-deed. The defendant has no right, title or interest over the suit field. However, with an intention to grab fertile land in possession of plaintiff, the defendant is trying to disturb his possession on the basis of said wrong description of the said field.

05. The plaintiff has further contended that on 10/06/2006 the defendant tried to encroach suit field with the help of tractor and other equipments. When the plaintiff resisted him, he threatened him of dire consequences. The plaintiff has, therefore, left no option but to file the present suit. The plaintiff has claimed that it be declared that the defendant has no concern with the suit field in any manner and he or any- body on his behalf be restrained from disturbing his peaceful possession over the suit field.

06. On summoned, the defendant appeared and resisted suit claim by filing W.S.(Exh. No.13). He has denied all adverse contentions made against him. He has denied ownership and possession of plaintiff over the suit field. The plaintiff has claimed negative declaration which can not be granted as per law. The suit is under valued. The four-boundaries given in sale-deed of the field purchased by him are correct. Since the date of sale-deed, the defendant is in possession of the same field which he has purchased. His predecessor-in-title was owning and possessing the same field which he has purchased.

07. The field which the defendant has purchased was admeasuring 1H 4R. Out of it, 44R's land is acquired by Government for PAZAR TALAV. After acquiring 44 R's land, 66 R's land remained with the predecessor-in-title of the defendant and the same land is sold to him. The defendant is in possession of same land. He has not made any encroachment on the suit land.

The claim of plaintiff is false and vexatious. The defendant has, therefore, claimed dismissal of the suit with compensatory costs of Rs.10,000/-.

08. On rival pleading of parties, my learned predecessor has framed issues vide Exh.16. I reproduce the same with findings thereon for the reasons given thereunder:-

<b><u>ISSUES</u></b>	<b><u>FINDINGS</u></b>
1. Does plaintiff prove(s) that, he is owner and possessor of suit property ?	No.
2. Does plaintiff prove(s) that, the defendant has unauthorizedly caused obstruction to his possession, over the suit property ?	No.
3. Does plaintiff prove(s) that, the boundaries described in the sale-deed of defendant are false ?	No.
4. Is plaintiff entitled to get relief of declaration that, the defendant has no concerned with the suit property ?	No.
5. Is plaintiff entitled to get relief of permanent injunction ?	No.
6. What order and decree ?	As per final order.

**REASONS**

09. **ISSUE NO.1 TO 5:-** In support of his claim, the plaintiff has examined himself as P.W.1 at Exh.17, Kashiram Kisan Wankhade as P.W. 2 at Exh.30 and Shankarraoji Fatkar as P.W.3.

10. As against this, the defendant has examined himself as D.W.1 at Exh.46.

11. The plaintiff has filed certain documents on record. However, he has failed to prove the same. His witness Shankar Fatkar has proved map (Exh.41).

12. The defendant has also filed certain documents on record. He has also failed to prove some of the documents. However, he has got proved certain documents during course of his evidence and cross-examination of defendant. The documents which he has got proved during cross-examination of plaintiff are mutation entry no.5982 (Exh.26), 7/12 extract of field G.no.631 standing in the name of plaintiff (Exh.27), 7/12 extract of field standing in the name of defendant (Exh.28), certified copy of sale-deed exhibited by Vilas Madhukar Jagtap and Deepak Madhukar Jagtap in favour of father of plaintiff namely Sheshrao Tukaram Jagtap.

13. The defendant has proved his sale-deed vide Exh.54 and 7/12 extract standing in the name of his vendors vide Exh.55.

14. P.W.1 Bhaskar Jagtap has testified that he owns suit field. Previously the suit field is owned by his aunt Jaibai Jagtap. He has rendered service in her old age. So on 22/01/1996 she has executed gift-deed in his favour about suit field.

15. Execution of gift-deed is a matter of documentary proof. So the plaintiff ought to have produced and proved gift-deed on record. However, the plaintiff has failed to prove the said gift-deed. The plaintiff has also not clarified about the said gift-deed and the property which came to be gifted to him by Jaibai. The plaintiff has also not examined any other witness in support of this fact. Thus the plaintiff has failed to prove that he has become owner of the suit field by way of gift-deed.

16. In cross-examination the plaintiff has admitted that field gut no.631 was partitioned in which his father has received share. His father is alive. He has denied that the share which his father has received in partition has been sold by him to Shrikant

Kulkarni. The mutation entry no.5982 (Exh. No.26) was shown to this witness. He admitted it to be correct. This mutation entry (Exh.26) clearly shows that father of plaintiff namely Sheshrao Jagtap sold field G. No.631 to the extent of 1H 2R to Shrikant Kulkarni on 30/11/1990. This field was received by father of plaintiff in the said partition.

17. Thus the documentary evidence produced on record by the defendant clearly shows that the father of plaintiff has already disposed off the field which he has received on his share in the said partition. So testimony of the plaintiff that he has inherited the suit field can not be accepted. The plaintiff has thus failed to prove that he is owner of suit field by way of inheritance.

18. So far as possession of suit field is concerned, the plaintiff has testified that on 22/01/1996 he has received the suit field by way of gift-deed. However, as held earlier, the plaintiff has failed to prove execution of said gift-deed in his favour. So testimony of plaintiff that he is in possession of the suit field on the basis of gift-deed can not be relied upon and accepted.

19. It is pertinent to mention here that the plaintiff has not produced on record any legal document to show that he is owner of the suit field. As held earlier the plaintiff has failed to prove his ownership by gift-deed or by inheritance. The plaintiff has not produced on record any document to show his ownership over the suit field. When the plaintiff is not owner of the suit field, there is no question of his possession over the suit field.

20. The learned advocate appearing for plaintiff has vehemently argued that original partition-deed is filed on record under list (Exh.43) in which father of plaintiff has received suit field. This document being more than 30 years old has a probative value. So it can be taken in to consideration U/s.90 of the Indian Evidence Act even though it is not exhibited.

21. As per section 90 of the Indian Evidence Act, there is presumption of 30 years old documents. However, that presumption is in respect of signature, execution or attestation of a document. It can not be extended to correctness of the contents of the document. As contents of the documents are not proved, the said document can not be taken in to consideration.

22. Even for a moment if the said document is taken to be proved, still then the said document will not be helpful to plaintiff in any way to prove his ownership over the suit field. As held earlier, father of plaintiff has sold the field which he had received in this partition to Shrikant Kulkarni.

23. The learned advocate appearing for plaintiff has further urged that in paragraph Nos.9 and 10 of cross-examination, the defendant has admitted ownership and possession of plaintiff over the suit field. I have gone through the said portion in his evidence. The defendant has admitted that field G. Nos.639, 631 and 659 were of Jagtap family. He has also admitted that the plaintiff is owner and in possession of 59R land.

24. The above both admissions can not be said to be admissions regarding ownership and possession of plaintiff over suit field. As per these admissions, the defendant meant to say that the plaintiff was in possession of 59 R land. That does not mean that the plaintiff is owner and in possession of the suit field. There is difference between was and is. As held earlier, father of plaintiff has sold out the suit field to Shrikant Kulkarni. In that sense of the

matter, the defendant was owner and in possession of suit field. The argument advanced by the advocate appearing for plaintiff being devoid of substance can not be accepted.

25. For the reasons stated above, I am of the view that the plaintiff has failed to prove that he is owner and possessor of the suit field.

26. So far as causing obstruction to possession of plaintiff is concerned, he has testified that on 10/06/2007 the defendant forcibly entered suit field along with tractor and other agricultural implements and tried to cultivate suit field. When he obstructed him, the defendant threatened him of dire consequences.

27. P.W.No.2 Kashiram Wankhade has testified that he has taken suit field on BATAI basis from plaintiff and since last 2 years he is cultivating it. He has taken it from plaintiff. His evidence by way of affidavit is filed on 25/08/2008. It means that on 10/06/2007 P.W.NO.2 Kashiram Wankhade was in cultivating possession of the suit field and not the plaintiff. If it is a fact, then

presence of plaintiff in the field on 10/06/2007 is doubtful. So his evidence about causing obstruction by defendant on that day can not be accepted to be reliable one.

28. P.W.No.2 Kashiram Wankhade has not clarified about causing obstruction by defendant to his possession over suit field. He has deposed that since last 2 years the defendant has forcibly taken possession of suit field and sown it. This evidence can not be accepted for the reasons mentioned below:

29. As held earlier, the suit field is not owned and possessed by plaintiff. So there is no question of giving suit field to P.W.2 Kashiram Wankhade on BATAI basis.

30. There is no evidence at all on record about the action taken by plaintiff or this witness against defendant regarding the said obstruction and encroachment. They have not either lodged a report about it with police or issued notice to defendant or measured the field to find out encroachment. Inaction on the part of plaintiff and this witness speaks more. It can, therefore, be inferred very well that the defendant must not have encroached upon suit field and, therefore, they must not have taken any action against the defendant.

31. It is also to be noted here that the plaintiff in his cross-examination at page no.14 has unequivocally admitted that the defendant is in possession of the same field which he has purchased. From this clear-cut admission, no conclusion can be drawn that defendant has made encroachment on the suit field.

32. The plaintiff has not produced on record any other satisfactory evidence to prove that the defendant has caused obstruction as contended. The plaintiff has thus failed to prove that the defendant has caused obstruction to his possession over the suit field.

33. For getting relief of perpetual injunction, the plaintiff has to prove that he was in lawful possession of the suit field on the date of filing of suit. The present suit is filed on 01/01/2008. I have already held that the plaintiff has failed to prove that he was owner and possessor of suit field. The plaintiff has also failed to produce any document on record to show that he was in lawful possession of the suit field on 01/01/2008. As the plaintiff was not in lawful possession of suit field on the date of filing of suit i. e. on 01/01/2008, he is not entitled for the relief of perpetual injunction. I, therefore, record findings in negative on this issue nos.1 to 5.

34. **ISSUE NO.3:-** The plaintiff has testified that in the year 2005 the defendant has purchased field from Indubai Jagtap and others. The said field is located towards west side of his field. Wrong description has been given about the field in the said sale-deed. The defendant is taking disadvantage of this fact. The plaintiff has pleaded that the defendant has shown four-boundaries of his field wrongly in the sale-deed.

35. In cross-examination the plaintiff has admitted that he has not measured his field. Unless land of a field and adjoining field is measured, no conclusion can be drawn about existing four-boundaries. The plaintiff can not be said to be in a position to say anything about wrong boundaries.

36. Certain admissions given by plaintiff in his cross-examination will help in deciding this controversy. The sale-deed (Exh.29) is in between father of plaintiff on one side and Vilas and Deepak Jagtap to other side in which four-boundaries are mentioned. As per this sale-deed, father of plaintiff has sold field Survey No.639. Towards east of this field, there is field of Indubai Madhukar Jagtap. The defendant has purchased the field under

sale-deed (Exh.54) from this Indubai Jagtap. In the sale-deed (Exh.54) four-boundaries are mentioned. Towards west side of the field purchased by defendant, there is field of Vilas Madhukar Jagtap. So this boundary mentioned in sale-deed (Exh.54) is tallying with the boundary mentioned in sale-deed (Exh.29).

37. The plaintiff has not clarified in his evidence as to how four-boundaries of field of defendant are incorrect. On the contrary, as stated above, the four-boundaries of field of defendant are correct and they are tallying with each other and with other evidence available on record. The plaintiff has not produced on record any satisfactory evidence to show that the four- boundaries of the field of defendant are incorrect. I, am, therefore, of the view that the plaintiff has failed to prove issue no.3. I, therefore, record findings in negative.

38. **ISSUE NO.4:-** As held earlier, the plaintiff is neither owner nor possessor of the suit field. As such, the plaintiff has no legal right nor legal character over the suit field. As per section 34 of the Specific relief Act, the plaintiff has to establish at the time of

suit that he is entitled to any legal character or to any right as to any property. However, the plaintiff has failed to establish his legal character or right over the suit field.

39. It is also to be noted that the Court will not grant relief u/s 34 of the Specific relief Act unless there is substantial injury. As the plaintiff is neither owner nor possessor of suit field, no substantial injury will be caused to him if injunction as prayed for has not been granted.

39. The declaratory relief can not be given to a plaintiff whose conduct is fraudulent. This rule is based on the maxim of equity that he who comes to equity must come with clean hands. Here in this case the plaintiff has not come with clean hands. He has suppressed material facts of disposal of suit field by his father. He has not pleaded all material facts in his plaint. He has also not filed relevant documents on record. I am, therefore, of the view that the plaintiff has not come in Court with clean hands. Therefore, declaratory relief can not be granted to him.

40. For the reasons mentioned above, I am of the view that the plaintiff has failed to prove that he is entitled for the relief of declaration as prayed for. I, therefore, record findings in negative on this issue.

41. The sum and substance of the aforesaid discussion is that the plaintiff has failed to prove that he is entitled for declaration and permanent injunction as prayed for. So the plaintiff is not entitled for the reliefs claimed by him. Hence the suit deserves to be dismissed. I, therefore, proceed to pass following order:

### **ORDER**

1. The suit is dismissed with costs.
2. A decree be drawn up accordingly.

( Pravin G. Tayade )  
Civil Judge ( Jr. Dn. )  
Balapur.

Dt/- 11.12.2013.