

**Vithoba Vs. Anand and Another**

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**Court :** Mumbai Aurangabad

**Decided On :** Mar-06-2014

**Judge :** T.V. Nalawade

**Appeal No. :** Second Appeal No. 742 of 2012 With Civil Application No. 2459 of 2014

**Appellant :** Vithoba

**Respondent :** Anand and Another

**Judgement :**

1) This appeal is filed against the judgment and decree in Regular Civil Appeal No.45 of 2002 which was pending in the Court of Ad-hoc District Judge-2 Ambajogai and against the judgment and decree of Regular Civil Suit No.248 of 1994 which was pending in the Court of the Civil Judge, Junior Division, Kaij, District Beed. The suit filed by the appellant/original plaintiff is dismissed by the trial Court and the first appellate court has confirmed this decision. Both the sides are heard for admission purpose.

2) It is the case of the appellant/plaintiff that land Gut No.332 situated at Kekat Sarni, Tahsil Kaij, is in his possession. It is contended that the land is Devasthan land belonging to Dattatraya Devasthan Ambajogai and one Yashwant Goswami was Inamdar of this land. It is contended that Yashwant had given the land to the plaintiff and his father for cultivation prior to 1950 and since then the plaintiff has

been in possession of this land. It is contended that on 3-6-1992 written document of lease / Batai Patra was given to him by the successor of Yashwant viz. Sarvadnya and accordingly the name of the plaintiff was entered in the revenue record in crops cultivation. He has given particulars of the crops taken by him in the field. It is contended that the defendants have no concern whatsoever with the suit property. He has prayed for relief of perpetual injunction to restrain the defendants from interfering in the possession of the plaintiff over the suit land.

3) The defendants filed joint written statement. They have admitted that land belongs to Dattatraya Sansthan of Ambajogai. They have admitted that Yashwant was Inamdar of the land and for rendering service to Devasthan the land was given. However, they have denied that the land was given by Yashwant to plaintiff or father of the plaintiff for cultivation purpose.

4) It is the case of the defendants that they are sons of deceased Yashwant, Inamdar, and after the death of Yashwant they and Sarvadnya have become Inamdar of the land. It is contended that the land was with joint family consisting of the defendants and Sarvadnya and they are jointly rendering service to the deity and there was joint possession and enjoyment of the land.

5) It is the case of the defendants that they had dispute with Sarvadnya, step brother of the defendants, in respect of the property left behind by Yashwant. It is contended that with ill-intention and to cause loss to the defendants, Sarvadnya has joined hands with the plaintiff and some false record is created. It is contended that revenue record was made in favour of the plaintiff by Sarvadnya and plaintiff in collusion with each other and they are not the correct entries.

6) Issues were framed with regard to claim of the plaintiff of possession and his entitlement to cultivate the land. In the trial Court both sides examined some witnesses. Sarvadnya, brother of the defendants, gave evidence in support of the case of the plaintiff. The trial Court dismissed the suit by observing that the land was with the joint family of the defendants and Sarvadnya and there was joint possession and enjoyment and as per the personal law with regard to Hindu Joint Family, no relief of injunction can be given to the plaintiff. The trial Court has refused to hold that so called Batai Patra can be read in evidence much less in

support of the case of the plaintiff. The trial Court has referred to some provisions of the Hyderabad Atiyat Inquiries Act, 1952 and in view of provisions of the said Act, the relief is refused. On the question of fact of possession and aforesaid circumstances the finding of the Appellate Court is concurrent.

7) In this appeal the appellant has framed some substantial questions of law which are with regard to the evidentiary value of the Batai Patra which is not registered under the provisions of the Registration Act. The question of grant or refusal of injunction if settled possession is shown is framed as question of fact and the application of provisions of the Hyderabad Atiyat Inquiries Act, 1952 where Inamdar himself is admitting rights of the plaintiff is also framed as substantial question of law.

8) It is not disputed that land Survey No.332 belongs to Devasthan Dattatraya Sansthan, Amabajogai. It is also not disputed that Yashwant, father of the defendants and Sarvadnya, was Inamdar of this land. There is revenue record in this regard like 7/12 extract. On the other hand the plaintiff is relying on the entries made in the 7/12 extract from the year 1995-96 in crop cultivation in his favour and document of Batai Patra which is not exhibited in the trial Court. He is also relying on evidence of some witnesses including Sarvadnya, step brother of the defendants. He has produced some receipts to show that he had paid the rent to Sarvadnya.

9) Learned counsel for the appellant has placed reliance on some reported cases. In the case of **Anthony v. K.C. Ittoop (AIR 2000 SC 3523)** the Apex Court has discussed the provisions of Sections 105 and 107 of the Transfer of Property Act, 1882. It is observed that circumstances like lease document was not registered would not stand in the way of Court to determine whether there was in fact a lease otherwise than through such deed. It is observed that when it is admitted by both sides that lessee was inducted into the possession and he was paying rent, the legal character of lessee in possession has to be attributed to a jural relationship between the parties. It is further laid down that such relationship on the fact situation of that case could not have been placed on different footing from that of lessor and lessee falling within the purview of Section 107 of the Transfer of

Property Act. It is observed that taking different view would be contrary to the reality when parties clearly intended to create lease through the document.

10) **SyedSamiullah v. The State of Maharashtra (2000 (1) Bom C.R. 897** (Aurangabad Bench). In this case this Court held that Hyderabad Atiyat Inquires Act 1952 does not bar creation of tenancies on Inam lands.

11) Reliance was placed on one more case reported as **1991(2) Bom.C.R.24** (Aurangabad Bench) (**Kishan Dashrath Naikwade v. Asrabai Babu Naikwade**). In this case this Court has observed that the provision of Section 6(3) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 only forbids transfer and partition without previous sanction of the Collector and creation of lease on the land granted to occupant under the provisions of Act is not prohibited.

12) **2000(2) Bom. C.R. 794** (Aurangabad Bench) (**Smt. Mehmooda Begum v. The State of Maharashtra**). In this case this Court has held that when title of Inamdar itself was in cloud he could not introduce a lessee and when he introduces lessee, the lessee should suffer the consequences. The facts show that inquiry under section 5 of the Hyderabad Atiyat Inquiries Act, 1952 was pending and during pendency, Inamdar executed lease deed in favour of the petitioner of the proceedings. Title of the Inamdar was itself under cloud when he introduced the petitioner as lessee/tenant. It was held that when Inamdar lost battle and the land was resumed by the Government, the petitioner was bound to suffer consequence of the decision. There cannot be dispute over the aforesaid propositions.

13) The record and the admission given by Sarvadnya in the evidence show that as successor of Yashwant, the defendant had become entitled to enjoy the suit property and have joint possession with Sarvadnya. Section 7 of the Hyderabad Atiyat Inquires Act, 1952 reads as under:-

**œ7. Succession:-** Subject to the provisions of this Act, succession to Atiyat grant shall, after the commencement of this Act, be regulated by the personal law applicable to the last holder.?

This section shows that succession to Atiyat grant is regulated by personal law applicable to the last holder. As after the death of Yashwant, the last holder, the possession of the defendants was joint with Sarvadnya, no right could have been given by Sarvadnya to the plaintiff which could have interfered the joint possession of the defendants. Even if the provision of the Atiyat Act (section 6) is ignored, the defendants would have succeeded in the suit. The trial Court has rightly placed reliance on the observations made by this Court in the case reported as **1990(1) Mah L.R. 5 (Dwarkanath Vishram Ghurye v. N.V. Dhond)**. In this case it is laid down that when a person is having an undivided share in any land he cannot create a valid lease in favour of anybody so long as the land is not divided by metes and bounds. Thus, even in ordinary course after transfer of portion of Sarvadnya, the remedy to third party was only to file suit for partition. The provisions of section 6 of the Atiyat Act reads as under:-

**œ6. Prohibition of alienation or encumbrance and exemption of attachment by Court:-** Atiyat grants shall not be liable to be transferred or encumbered in any manner or to any extent whatsoever and it shall not be lawful for any Court to attach or sell any Atiyat grant or any portion or share thereof.

Provided that half the income of the Atiyat grant shall be attachable in execution of a decree through the Revenue Department.?

14) In view of provisions of section 6, the alienation or creating encumbrance on the suit land is not possible. Even if it is presumed that the lessee could have been inducted, in view of the observations made in the cases (cited supra), that could have been done jointly by defendants and Sarvadnya. The evidence of Sarvadnya shows that he has dispute with defendants and he created some document in favour of the plaintiff. However, subsequently there was compromise and some document regarding rights of defendant was created in favour of the defendants. The documents created by Sarvadnya in favour of plaintiff which include receipts also cannot be used against the defendants in view of the aforesaid circumstances. As there was joint possession of the defendants with Sarvadnya, there was no question of granting relief of injunction against them. There is a record starting from the year 1994-95 like revenue entry in crop cultivation column

but that needs to be ignored. There is allegation that Sarvadnya joined hands with plaintiff Vithoba and due to that entry of Vithoba was made in the crop cultivation column. No record at all is with the plaintiff to show that from 1950 he was in possession or Yashwant had inducted him as a tenant. In view of these circumstances, even if the so called Batai Patra is read in evidence that would not change the fate of the matter. As the plaintiff cannot prove exclusive possession, there was no question of giving any relief to him. Thus no substantial question of law is made out. Both the Courts below have considered the aforesaid circumstances and this Court sees no reason to interfere in the decision given by the two courts.

15) In the result, the appeal stands dismissed. Civil Application stands disposed of.

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