

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

SECOND APPEAL NO.: 116 OF 2004

Sidharth Ashram School,
Chowka Tq. and District,
Aurangabad through its
Head Master, Shri B.V.Gaikwad,
Age: years, Occu: Service,
R/o Chowka, Tq. & Dist. Aurangabad.

... **APPELLANT**
[ORIG. PLAINTIFF]

VERSUS

Rukhminibai W/o Ukhaji Dhuke,
Age: about 65 years, Occu.: Household,
R/o At Padegaon, Tq. & Dist.
Aurangabad.

... **RESPONDENT**
[ORIG. DEFENDANT]

Advocate for Appellant : Mr. H. M. Salve.
Advocate for Respondent: Mr. Paranjape Prakash S.
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CORAM:- T. V. NALAWADE, J.
DATED:- 10th SEPTEMBER, 2015.

JUDGMENT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.827 of 1998 and also judgment and order of Regular Civil Appeal No.379 of 2000. The suit was pending in the Court of Civil Judge, Junior Division, Aurangabad and the appeal is decided by learned Additional District Judge, Aurangabad. Both the

sides are heard.

2. Plaintiff is an educational institution and the suit was filed in respect of land Survey No.97 (New Gat No.397) admeasuring 7 Acres 9 Gunthas situated at village Chowka, Taluka and District Aurangabad. It is the case of the plaintiff that it purchased the suit property from the owner Smt. Radhabai Gunjal in the year 1965 and since then it is in possession of the property. It is contended that it has spent huge amount for construction of school building and its building is present on the property for about 30 years. It is the case of plaintiff that defendant Smt. Rukhminibai has no right or title in respect of the suit property but by filing proceeding under the Succession Act she obtained letter of administration in respect of the suit property and on that basis she is interfering in the possession of plaintiff over the suit property. it is contended that the said certificate is not binding on plaintiff. It is contended that the property was sold by owner Radhabai but she could not execute the sale deed during her life time. it is contended that Radhabai had sworn affidavit in favour of plaintiff on 28th July, 1965 and the record also shows that the property was sold by her to the plaintiff and the possession was

given to plaintiff.

3. Alternatively, plaintiff contended that the plaintiff has been in possession of the suit property continuously for the period of more than 12 years and so plaintiff has perfected its title. The reliefs of injunction and declaration were claimed against the defendant.

4. The defendant has denied everything about the transfer of the property by Radhabai in favour of plaintiff and also about the possession of the plaintiff over the suit property. It is contended that some false record is created and there was no transfer as such under the provisions of Section 54 of the Transfer of Property Act in favour of the plaintiff. It is contended that by joining hands with Village Talathi and other authorities plaintiff has created some record but plaintiff is a trespasser on some portion. It is contended that the plaintiff has taken conflicting defences and that is sufficient to show that the plaintiff has no right in respect of the suit property.

5. It is the case of the defendants that her mother was the real sister of Radhabai and as Radhabai died issueless, she applied for getting letter of administration and Civil Court has issued certificate in her favour. It is her case

that her name is also entered in the revenue record and so in that capacity she is in possession of the suit property.

6. In the trial Court, issues were framed and both the sides gave evidence. The trial Court has held that the plaintiff has failed to prove its ownership over the suit property and also the lawful possession over the suit property. The first Appellate Court has confirmed this decision.

7. It appears that, while admitting the appeal, this Court (other Honourable Judge) did not specifically formulate substantial questions of law. The contention of the appellant, plaintiff regarding the weightage given to the certificate issued in favour of defendant under section 212 of Indian Succession Act is considered as a relevant point and it is observed that the point about the perversity in appreciation of the evidence can be considered. On the basis of submissions made by both the sides and the contentions in the appeal memo, following substantial questions of law are considered by this Court:

- (i) Whether the Courts below have committed error in holding that the defendant has a better title?
- (ii) Whether the Courts below have ignored any

material and that has led to wrong inference that plaintiff has failed to prove the lawful possession?

8. From the rival pleadings, it can be said that there is nothing with the plaintiff to prove that for a particular amount Radhabai, the owner, had agreed to sell the property to the plaintiff. It can be said that on the basis of one so called affidavit sworn by Radhabai plaintiff tried to prove that there was some transaction between Radhabai and plaintiff. The said document, xerox copy of a document, filed before Assistant Collector was not duly proved. Even if the contents are read it can be said that some proceeding was started for getting permission to transfer the property and the permission was required under the provisions of Hyderabad Tenancy and Agricultural Lands Act. As the contents of the document and even execution of the document was required to be proved, this document could not have been considered and rightly both the Courts below have ignored this document. Surprisingly, even when the plaintiff is an educational institution, it has no record of its own to show that it had agreed to purchase the property for a particular consideration and the consideration amount was parted

with. it is a fact that in the revenue record the name of Radhabai was continued as the owner even after her death and there are 7/12 extracts showing that only after making of the application by defendant on the basis of aforesaid certificate her name came to be entered in the ownership column. In the possession, column, however, the name of plaintiff institution was mentioned.

9. Many witnesses were examined by plaintiff but those witnesses are only on the point of possession and they have tried to say that there was such transaction between Radhabai and the plaintiff. The evidence of the employees of the plaintiff institution shows that the consideration amount was Rs.6,000/- when, before the authority, in the so called document of affidavit the consideration was mentioned as Rs.1,000/-. Admittedly, there was no document like agreement of sale created and it is admitted that no sale deed was executed by Radhabai in favour of plaintiff institution. In view of the provisions of Section 54 of Transfer of Properties Act the plaintiff cannot say that the title is passed to it under the so called oral transaction. One witness Fakir (P.W.2) has tried to say that in his presence some affidavits were made by Radhabai but

those documents on which there could have been signature of such witness to identify Radhabai are not produced. His evidence shows that he purchased some land from Radhabai and Radhabai executed sale deed which was registered in respect of this portion. Thus, there was no reason for her not to execute the sale deed in favour of the plaintiff. At least the 7/12 extract does not show that some permission of authority was required to be obtained. In view of these circumstances, even if the evidence of the other side is ignored, it was not possible for the plaintiff to get the declaration of ownership.

10. Only due to the circumstance like possession over some portion and the case of the plaintiff that Radhabai had allowed the school to use the land, it can be said that it was a permissible possession. As there is nothing on record to show that Radhabai had allowed the school to make construction and as the defendant is not claiming any right in respect of the constructed portion, the plaintiff cannot say that it is in lawful possession over the remaining area.

11. The learned counsel for Appellant plaintiff submitted that in view of the provision of Section 15 of Hindu

Succession Act (Exception) and the evidence of defendant it needs to be presumed that the defendant cannot be treated as legal heir of Radhabai for the purpose of suit property. He submitted that when the property had come to Radhabai from her husband, the defendant, who is a daughter of sister of Radhabai, cannot claim any right in the suit property. He submitted that in view of this circumstance, the Courts below ought to have given injunction in favour of plaintiff. Careful reading of the provision of section 15 shows that only if the heirs from the husband side are available than the exception can be used. Thus, only the heirs of husband can have better title than the defendant. Plaintiff has no locus standi to say that the defendant has no better title in view of the aforesaid circumstances. Further, the Civil Court has granted letter of administration in favour of the defendant and that circumstance needs to be considered as it is. In that matter also plaintiff had no locus standi. The decision is given on the aforesaid facts of the case.

12. Learned counsel for the Appellant placed reliance on some cases, reported as **2008 AIR SCW 4161 [C. K. Prahalada & Ors. V/s State of Karnataka & Ors.]**, AIR

2005 Calcutta 343 [Smt. Chunibala Barui and others V/s Lakshmimani Adhikary and others], AIR 1998 SC 1692 [Seethalakshmi Ammal V/s Muthuvenkatarama Iyengar and another], AIR 2003 Gauhati 92 [Smt. Dhanistha Kalita V/s Ramakanta Kalita and others], AIR 2006 SC 623 [Ramlal and Anr. V/s Phagua and Ors.], 2003 (6) SCC 633 [V. Dandapani Chettiar V/s Balasubramanian Chettiar (Dead) By Lrs.] and AIR 1972 SC 2299 [M. Kallappa Setty V/s M. V. Lakshminarayana Rao].

13. In the last case, the Apex Court has laid down that if the plaintiff is in possession of the suit property he can, on the strength of his possession, resist interference from defendant who has no better title than plaintiff and thus injunction can be granted in favour of plaintiff in such a case. There cannot be any dispute over this proposition. This Court has already observed that in view of the facts and circumstances of the present case it needs to be presumed that the defendant has the better title. In the case of *V. Dandapani Chettiar (supra)* the provision of section 15 (1) and 15 (2) of Hindu Succession Act, 1956 is discussed. It is laid down that the property which comes to

a female heir from her father needs to be dealt with separately and similarly the property which comes from other heirs like husband needs to be dealt with separately. There cannot be any dispute over this proposition and sufficient discussion is made on this point. The case of *Smt. Dhanistha Kalita (Gauhati)*, cited supra is also on same point and it is held that when the property comes to a female from her husband the property devolves only on son and daughter begotten by deceased female from her husband. There cannot be any dispute over this proposition. In the cases of *C.K.Pralhada* and *Smt. Chunibala (supra)* the Apex Court and Calcutta High Court have discussed the purpose behind succession certificate and letter of administration. It is observed that when the certificate is given under Indian Succession Act, no question of taking decision on the title is involved and so the holder of succession certificate does not get title on the basis of such certificate and he is duty bound to hand over the property to a person who has legal title to the property. This proposition also cannot be disputed. In the case of *Ramlal (supra)* the Apex Court observed that mere mutation does not confer any title, right or interest in

favour of the person in whose name mutation is effected. There cannot be any dispute over this proposition. In the same case, it is observed that if oral and documentary evidence is not appreciated properly, the High Court is at liberty to re-appreciate the evidence in second appeal. This proposition also cannot be disputed. This Court has considered the relevant material. In view of the facts and circumstances of the present case, this Court holds that the aforesaid points need to be answered against the plaintiff, appellant.

14. In the result, the appeal stands dismissed.

15. In view of final disposal of the second appeal, the pending civil application No.11421 of 2012 for injunction does not survive and the same stands disposed of.

[T. V. NALAWADE, J.]

Dated:10/09/2015.
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