

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 134 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 268 OF 2015
IN
SECOND APPEAL NO. 134 OF 2015

1. Late Dnyanu Krishna Nalawade,
Since deceased through LRs

1A Smt. Nanubai Dnyanu Nalawade,
Age 72 years, Occupation Household

1B. Shivaji Dnyanu Nalawade,
Deceased through LR

1B1. Pandurang Shivaji Nalawade,
Age 31 years, Occupation Agriculturist

1C. Tanaji Dnyanu Nalawade
Age 50 years, Occupation Agriculturist

1D. Manaji Dnyanu Nalawade,
Age 42 years, Occupation Agriculturist

1E. Sau Chhaya Shivaji Gavade,
Age 60 years, Occupation Household
Addresses All C/o. Appellant No.1A
Smt. Nanubai Dnyanu Nalawade,
Resident of Kavalpur, Taluka Miraj
District – Sangli

.....Appellants/
(Orig. Plaintiffs)

: V/S :

1. Smt. Sonabai Tukaram Nalawade,

Age : 65 years, Occupation Household,
Resident of Ambrai Mala, Kavalpur,
Taluka-Miraj, District- Sangli.

2. Mahadeo Bapu Nalawade,
Age : 45 years, Occupation Agriculture

3. Bapu Krishna Nalawade,
Age : 70 years, Occupation Agriculturist
Nos. 2 and 3, residents of Kavalpur,
Taluka-Miraj, District- Sangli

.....Respondents
(Orig. Defendants)

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Mr. Anilkumar Patil, Advocate for the appellants.

Mr. Ramdas Shelke, Advocate for the respondents.

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CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED : 12TH MARCH, 2015.

JUDGMENT :-

1). This Second Appeal preferred by the original plaintiffs arises out of the order dated 9th December, 2014 by which the District Judge, Sangli allowed Regular Civil Appeal No. 323 of 2011 and set aside the judgment and decree dated 2nd July, 2011 passed by the trial Court in Regular Civil Suit No. 209 of 1997 and dismissed the suit.

2). One Dnyanu, the original plaintiff filed the suit against his brothers, Tukaram, original defendant no.1, Bapu, defendant no.3 and son of Bapu, defendant no.2 for a declaration that the decree passed in Special Civil Suit No. 561 of 1998 is not binding on him and for partition of the suit properties. During the pendency of the suit, Dnyanu and Tukaram died and their heirs were brought on record, who have continued the proceedings upto this Court. The parties shall be hereinafter referred to by their original nomenclature.

3. Briefly stated, the case of the original plaintiff in the plaint was that, there was a joint family constituted by himself, original defendant no.1 and Bapu defendant no.3. The original plaintiff and original defendant no.1 had been cultivating, as agricultural tenants, land at Block No. 1632/B admeasuring 1 Hectare 80 Ares owned by one Radhabai Kulkarni and Jankibai Kulkarni. The name of defendant no.1 had been entered into the revenue records as the agricultural tenant in his capacity as Manager of the joint family. Original defendant no.1 had filed Tenancy Case no. 72 of 1990 for fixation of the purchase price of the suit property under section 32G of the Act. In the said proceedings, evidence of original defendant no.1 was recorded on 12th September, 1991 wherein he described himself as the Karta of the family and stated that he was in possession of the property alongwith

his brother. In the said proceedings, the purchase price was fixed at Rs.340/-. According to the original plaintiff, the price was paid by him and original defendant no.1 jointly. But, the purchase certificate was issued by the Tahsildar on 4th November, 1999 in the name of original defendant no.1 and vide mutation entry no.11610 the revenue record was mutated to show him as the owner of the land.

4. Defendant no.2, had filed Special Civil Suit No. 561 of 1998 against original defendant no.1 and the present defendant no.1, his widow contending that the suit property had fallen to his share and it belonged to him alone. In that suit a compromise purshish was filed and the suit decreed in terms thereof. Later, defendant no.2 filed Misc. Application No. 179 of 2000 in that suit and obtained an order that the decretal amount was fully satisfied. According to the original plaintiff, since defendant no.3, the father of defendant no.2 was alive defendant no.2 had no right, title or interest in the suit property. Therefore, the suit filed was a fraud played on the Court. On the basis of the decree, defendant no.2 had got the revenue record mutated in his name vide mutation entry no. 11609. The original plaintiff claimed that, since he was not a party to the suit the orders and the decrees passed against him are not binding upon him. He contended that he got the knowledge of the suit and decree only from the written

statement filed by the widow of original defendant no.1 in another proceedings i.e. Regular Civil Suit No. 52 of 1997. Thereafter, defendant no.2 had tried to take forcible possession of the suit property and the plaintiff had to approach police with a complaint. However, as no action was initiated by the police, he filed suit for partition and separate possession of the suit property.

5). All the defendants filed their written statement and denied the case of the plaintiff. According to the defendants, original defendant no.1 was the agricultural tenant in respect of the suit property and the same had been subsequently purchased by him independently. They denied that the brothers constituted a joint family. According to them, name of original defendant no.1 was never recorded as the Manager of the joint family. The entire purchase price for the land had been paid by original defendant no.1 alone.

6). The trial Court, on appreciation of the evidence before it held that the suit property was the joint family property of the original plaintiff and the original defendant no.1 and that there was partition effected on 10th November, 1989. The original plaintiff as such had a right to the suit property. As regards the allegation of the attempt at taking forcible possession of the suit property, the trial Court disbelieved the same.

7). For arriving at the finding of existence of the joint family, the trial Court had believed the contention of the original plaintiff that there was an admission by original defendant no.1 in the statement filed in the tenancy proceedings that, he was the Manager of the joint family and was in possession of the property alongwith his brother. The other evidence accepted by the trial Court was that, Special Civil Suit No. 561 of 1998 was filed by defendant no.2 after the summons in Reg. Civil Suit No. 52 of 1997 was served on the parties. The trial Court decreed the suit declaring that the decree passed in Spl. Civil Suit No. 561 of 1998 is not binding on the plaintiffs and that they have one-third share in the suit property. The shares of the defendants as declared were, one-third for defendant no.1 and one-third jointly for defendants no.2 and 3.

8). The Appellate Court, by the impugned judgment and order reversed the findings of the trial Court. It found that there was no material on record to prove that, (i)the suit property is ancestral property, (ii)there was joint family and (iii)original defendant no.1 was Karta of the joint family. The only witness examined by the plaintiffs was the grandson of the original plaintiff. He had deposed of the facts that had taken place at least 30 years prior to his birth. Therefore, his testimony was useless. There was no evidence produced to establish

that Krishna, the common ancestor was the agricultural tenant in respect of the suit property. For establishing the fact that original defendant no.1 was Karta of the joint family, reliance had been placed by the plaintiffs on the statement of original defendant no.1 recorded in the tenancy proceedings describing himself as the Manager of the joint family. On perusal of the document, the Appellate Court found that the description relied upon had been inserted in the document and it was in a different hand. There was no initial put against the insertion. That made the copy of the document produced doubtful. Similar insertion was found even at the end of the document in the portion of conclusion thereby changing the concluding part of the statement. Besides, though there are three brothers, the reference to the joint family in the statement was in respect of only two brothers. These findings are seen to be supported by the material on record. Apparently, the trial Court had missed the defects in the document.

9). As regards the declaration sought by the original plaintiff that the judgment and decree in Special Civil Suit No. 561 of 1998 is not binding on him, the Appellate Court found that the relief was barred by the law of limitation. The suit was decided on 13th November, 1998. The judgment and decree was challenged in the suit instituted on 18th June, 2007. Hence, the bar of limitation was obvious. But the original

plaintiff had contended that, he had learnt about it only when defendant no.1 i.e. the widow of original defendant referred to it, in her written statement. The Appeal Court noted that, the original plaintiff could not have pleaded ignorance of law. There were already proceedings pending between the parties and the original plaintiff was aware of the same. Further, the witness of the plaintiffs admitted in his cross-examination that the original plaintiff used to attend cases at the very place where the suit was pending. This finding is a possible view of the matter.

10). The grounds of challenge raised by the plaintiffs in the Second Appeal are seen to essentially pertain to appreciation of evidence on record. The District Court found that, the appreciation by the trial Court was not correct and was *infact* perverse. The obvious aspects of the evidence of the plaintiffs that are noted by the District Court were neither noted nor considered by the trial Court. The witness examined by the plaintiffs had no personal knowledge as regards the facts of the case. Therefore, the oral evidence led by the plaintiffs was virtually no evidence. As regards the alleged admission on the part of original defendant no.1 by way of describing himself as the Karta of the joint family in his statement in one of the proceedings, the District Court correctly noted that the document had been tampered with and there was

no explanation offered for the alteration of the document by way of insertion. The zerox copy of the statement has been produced before this Court and it shows that there are insertions at two places in the document. The handwriting of the insertion is different from the handwriting of the document. In that circumstance, the District Court has rightly disbelieved the document.

11). In the circumstances, no substantial question of law arises in the Appeal for consideration of the Court. Hence, the Second Appeal is dismissed.

12). In view of dismissal of Second Appeal, Civil Application No. 268 of 2015 does not survive. The same is disposed off as infructuous.

(SMT. R.P. SONDURBALDOTA, J)