

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.201 of 2002

Shri Laxman Balu Jadhav,
Age 44 years,
Occupation – Agril.,
R/o Siddhapur,
Tal. Chikkodi,
Dist. Belgaon.

... Appellant/
Original Defendant
No.1

Versus

1. Smt. Mahalingavva w/o
Satlingappa Hukkeri,
Age 66 years,
Occupation – Household.
2. Vilas Satlingappa Hukkeri,
Age 36 years,
Occupation – Service.
3. Prakash Bharmha Jadhav,
Age 39 years,
Occupation – Buss.

All R/o Nadives Basavangalli
Sankeshwar, Tal. Hukkeri,
Dist. Belgaon.

... Respondents/
(Resp.No.1-Ori.
Plff., Resp.No.2-
Ori.Deft.No.3 and
Resp.No.3-Ori.
Deft.No.2)

Shri V.S. Gokhale, Advocate for Appellant.
Shri Umesh Mankapure, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Dated :25th June, 2015

Oral Judgment :

1. Regular Civil Suit No.110 of 1984 for grant of permanent injunction restraining the defendant No.1 from interfering with or obstructing the possession of the plaintiff over the suit land, was decreed by the Trial Court on 19-6-1996. Regular Civil Appeal No.79 of 1998 has been dismissed by the lower Appellate Court on 4-4-2000. Hence, the defendant No.1 is before this Court against the concurrent findings of fact recorded by the Courts below.

2. The Courts below have held that Salingappa Hukkeri, the husband of the plaintiff Smt. Mahalingavva, was in possession of the suit land on the basis of the agreement to sell dated 24-4-1972 at Exhibit 175, executed by the original owner Bharma Jadhav, and consequently, the defendant No.2, the adopted son of Bharma Jadhav, executed the sale-deed in favour of the plaintiff at Exhibit 156 on 19-7-1983. The plaintiff Smt. Mahalingavva Hukkeri claimed title over the suit land on the basis of the registered sale-deed at Exhibit 156. The plaintiff is found to be in possession of the suit land by the Courts below and, therefore, the decree for perpetual injunction

restraining the defendant No.1 from interfering with and obstructing the possession of the plaintiff over the suit land, has been passed.

3. The suit was contested by the defendant No.1, who is the nephew of Bharmha Jadhav, the original owner. The defendant No.1 contended that Bharmha Jadhav executed the Will dated 1-9-1975 in his favour in respect of the suit land and, therefore, he became the owner by virtue of it upon the death of Bharmha Jadhav on 12-9-1977. The Courts below have rejected this contention on the ground that the said Will was revoked by Bharmha Jadhav on 10-12-1976. The defendant No.1 also raised a defence that he became the owner of the property on the basis of another Will dated 1-9-1977 executed by Bharmha Jadhav in his favour.

4. In the background of the findings recorded by the Courts below, this Court passed an order on 10-4-2002, admitting this second appeal on the substantial questions of law, which are framed as under :

“ *Heard. Perused the certified copies of the impugned judgments and decrees of the two Courts below. The appeal*

stands admitted on following substantial questions of law.

- 1) Whether the two Courts below could ignore the provisions of section 43 of the BT & AL Act, 1948 when deceased Bharma had got the suit land in view of provisions of Section 32 of BT & AL Act, 1948 and could decree the suit in favour of the Plaintiff?*
- 2) Whether there has been a defect in the procedure followed by the two courts below in not giving appropriate significance to the will executed by deceased Bharma on 1-9-1977 when earlier will was revoked?*
- 3) Whether the judgments and decrees passed by two Courts below are suffering from the defect in procedure in ignoring the salient features of the alleged adoption of Prakash who sold the suit land to his real mother Mahalingavva which presumes the nature of deceptive acts for giving go-by to the prohibition cast on such transactions by provisions of Section 43 of the BT & AL Act, 1948?*
- 4) Whether the judgment and decree is incorrect, perverse and illegal?*

Issue notice of final hearing of this appeal on payment of process fee within a week returnable after a month. Call the

record and proceedings urgently.”

5. It is not disputed before this Court and also before the Courts below that Bharmha Jadhav became the owner of the suit land on the basis of the certificate granted under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 on 13-2-1969. It is also an undisputed position that for sale of the suit land, the provision of Section 43 of the said Act was attracted and the permission of the Collector was required for such sale. It is also not disputed that the Will executed by Bharmha Jadhav in favour of the defendant No.1 was revoked on 10-12-1976. The defendant No.2 is the adopted son of Bharmha Jadhav, who could succeed to the estate of Bharmha Jadhav in the absence of the Will in favour of the defendant No.1 by the said Bharmha Jadhav. No doubt, that the plaintiff is the real mother of the defendant No.2 in whose favour the sale-deed dated 29-7-1983 at Exhibit 156 was executed. It is the claim of the defendant No.1 that Bharmha Jadhav executed another Will on 1-9-1977 in his favour.

6. In the light of the aforesaid position, so far as the substantial question of at serial No.3 in respect of obtaining prior permission of the Collector under Section 43 of the Bombay Tenancy and

Agricultural Lands Act is concerned, the decree in question is merely of a permanent injunction restraining the defendants from interfering with or obstructing the possession of the plaintiff over the suit land. Even if the sale-deed dated 29-7-1983 at Exhibit 156 is ignored, the grant of an injunction on the basis of possession cannot be faulted with. The possession of the plaintiff is lawful on the basis of an agreement to sell dated 24-4-1972 at Exhibit 175 with her husband by the original owner Bharna Jadhav. Section 43 of the said Act, therefore, would not come in the way of the plaintiff, as it is attracted only in case of a transfer of property. Thus, the substantial question of law at serial No.3 is answered accordingly.

7. As regards the substantial question of law at serial No.2, as pointed out earlier, it was the defence raised by the defendant No.1 that he became the owner by virtue of the Will dated 1-9-1977, said to have been executed by the defendant No.1. It was not the suit or counter-claim by the defendant No.1 for grant of declaration of his title over the suit property. Unless the defendant No.1 establishes a title better than the plaintiff, he cannot succeed in taking possession. Obviously, the agreement to sell executed by Bharna Jadhav dated 24-4-1972 at Exhibit 175 in favour of the husband of the

plaintiff, is prior in point of time. In fact Civil Suit No.100 of 1974 was filed by the husband of the plaintiff seeking injunction restraining Bharmha Jadhav, the original owner, from interfering with or obstructing his possession over the suit land. The said suit was decreed on 23-3-1977. Though an appeal was preferred by Bharmha Jadhav against it, the same was withdrawn on 17-7-1977. The substantial question of law at serial No.2, therefore, does not at all arise.

8. In view of the answers on the substantial questions of law at serial Nos.2 and 3, the other substantial questions of law do not call for consideration. Thus, there is no perversity in the findings recorded by the Courts below.

9. The second appeal is dismissed. No order as to costs.

10. Keeping in view the observations made in this judgment, the revenue authorities shall act accordingly.

Judge.