

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 511 OF 1993

1. Shri Mahadeo Kashiba Waghmode, Age 32)
2. Shri Vitthal Kashiba Waghmode, Age 25)
3. Shri Sadashiv @ Sahadeo Kashiba Waghmode)
 Age 20, All Agriculturist, residing at)
 Lingnoor, Taluka Miraj, District Sangli) Appellants

VERSUS

1. Shri Kallappa Shidlinga Waghmode, Age 34)
2. Shri Dagadu Pradhani Waghmode, Age 32)
 Residing of Lingnoor, Taluka Miraj)
 District Sangli) Respondents
 S.A. Stand dismissed
 as against R.No.2 as per
 Addl.Registrar's Order
 dated 22/12/1995 passed
 on office report.

Mr.V.S.Gokhale for the Appellants.

Mr.N.J.Patil for Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATED : 3rd DECEMBER, 2015

JUDGMENT

By this second appeal, the appellants have impugned the judgment and decree dated 7th November, 1990 passed by the learned Additional District Judge dismissing the appeal filed by the appellants (original plaintiffs).

2. By an order dated 11th January, 1994 this court while admitting the second

appeal had formulated following substantial questions of law :-

- (1) Whether the title and possession of agricultural lands could be decided solely on the basis of mutations effected by the revenue authorities.
- (2) Whether the decision of the Revenue Authorities in inquiry regarding the right based on the record of rights entries is final and binding and whether the title of the rights is determined by such decisions alone.
- (3) Whether it is permissible to change the record in respect of lands governed and covered by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, and whether the holdings determined under the said Act could be tampered with by mutation entries made subsequently in respect of the said holdings.
- (4) Whether the Courts below erred in law in favour of the plaintiffs coupled with other oral and documentary evidence while deciding the exclusive possession of the plaintiffs, preferring only the decision of the Revenue Authorities in the Disputes Register.
- (5) Whether the Courts below erred in law in holding that the Plaintiffs failed to prove their exclusive possession in respect of the suit properties.

3. Some of the relevant facts for the purpose of deciding this appeal are as under :-

4. It was the case of the plaintiffs before the learned trial court that the suit

properties bearing Gat Nos. 55, 188, 314, 1226, 1289 situated at village Lingnur were standing in the name of the father of the plaintiffs Mr.Kashiba Shingadi Dhangar. After the demise of the said Mr. Kashiba Shingadi Dhangar, the suit land was standing in the name of the plaintiffs. It was the case of the plaintiffs that the plaintiffs were in the actual possession of the suit properties.

5. According to the plaintiffs, the defendants were trying to enter their names in the village record of the rights sometimes in the year 1978 and had filed an application for recording their names in the mutation entry. The revenue authority had issued notice to the plaintiffs in respect of such application made by the respondents. The plaintiffs therefore filed a suit inter alia praying for perpetual injunction in respect of the suit property against the respondents alleging that the respondents were obstructing the exclusive possession in the suit land. The land was resisted by the defendants by filing a written statement at Ex.27. It was the case of the defendants that the father of the plaintiffs and father of the defendant no.1, father of defendant no.2 were the real brothers. The name of grand-father of defendant no.1 was Mr.Shingadi who had five sons. His son Birappa died when he was a child. His father left behind four sons by name Annappa, Pradhani, Kashiba and Sidalingappa. The plaintiffs were the sons of Kashiba. Defendant no.1 is the son of Sidalingappa. Defendant no.2 is the son of Pradhani.

6. It was the case of the defendants that after the death of the Kashiba, the name of the plaintiff was incorrectly recorded in the record of rights. The suit lands bearing Gat Nos. 55 and 1226 were in possession of the joint family and as such the plaintiffs, defendants and other co-sharers had joint possession in respect of the suit lands. It was the case of the defendants that the plaintiffs were never in exclusive possession of the suit land. The learned trial Judge framed following

four issues which are extracted as under :-

- (1) Do the plaintiffs prove their exclusive vahivat and possession on the suit land on the date of suit ?
- (2) Whether the plaintiffs have failed to prove that the defendants have threatened their possession in respect of the suit land ?
- (3) If yes, are the plaintiffs entitled to the permanent injunction sought ?
- (4) What order and decree ?

7. On behalf of the plaintiffs, the plaintiff no.2 was examined as a witness. It was deposed by the said witness that the suit lands were standing in the name of the Kashiba and after Kashiba the suit lands were standing in the name of plaintiffs. The said ancestral lands stood in the name of the plaintiffs and the defendants. The said witness however admitted in his cross examination that one of his distant uncle by name Kenchappa Jotiba Waghmode had adopted him prior to two years. He admitted that Appanna the elder brother of Kashiba was dead and Malbari, the son of Appanna and his brother was in the possession of separate share and Kashiba had given them their separate share. After considering the oral and documentary evidence, the learned trial Judge rendered a finding that the plaintiffs had suppressed the facts that the lands were occupied prior to 100 years which made it clear that lands were occupied in the lifetime of father of Kashiba and even prior to the birth of Kashiba. It is held that no documentary evidence was forthcoming by the plaintiffs to prove the exclusive title of the plaintiffs to the suit land. The learned trial Judge has rendered a finding that the suit properties were in joint possession of the plaintiffs and the defendants and not in exclusive

possession of the plaintiffs.

8. The learned trial Judge while rendering such finding also considered the oral evidence led by the defendant no.1 who had deposed that the suit land was in joint possession between the plaintiffs and the defendants. The defendants had also examined one Malu Appanna Waghmode who was the elder son of the deceased Appanna and who was the brother of Kashiba. He deposed that he had got separate possession of their share in the suit land from Kashiba.

9. The learned trial Judge accordingly held that the plaintiffs were not entitled for permanent injunction as sought. The learned trial Judge answered issue nos.1 and 2 in negative and held that the plaintiffs failed to prove their exclusive wahivat and possession of the suit land on the date of the suit or that the defendants had threatened their possession in the suit land.

10. Being aggrieved by the said judgments and decree passed by the learned trial Judge, the appellants filed an appeal before the learned District Judge. The learned District Judge considered three points for determination. The learned District Judge confirmed the findings rendered by the learned trial Judge that the suit properties were in joint possession of the plaintiffs and the defendants. The learned District Judge however in the impugned order has held that when the mutation entries are in the names of the defendants along with the plaintiffs for all purposes and for the purposes of this suit which was for injunction simplicitor, the ownership of the suit lands must be taken to be the joint ownership of the joint family as such and thus the mutation proceedings must be respected.

11. Mr.Gokhale, learned counsel for the appellant invited my attention to the plaint, oral evidence led by the parties and also the findings rendered by the two

courts below. He submits that there was no adjudication of the title sought by the plaintiffs before the learned trial Judge. The suit was simplicitor for injunction. He submits that the learned District Judge could not have rendered a finding on ownership based on the mutation entries. He submits that admittedly prior to 1978, the suit properties were standing in the name of the plaintiffs or his ancestors in the mutation record. Only in the year 1978, the respondents made an application before the revenue authority for recording the names of the plaintiffs as well as the defendants in respect of the suit properties jointly. Learned counsel for the appellants could not point out any perversity in the findings rendered by two courts below.

12. It is not in dispute that the names of the plaintiffs and the defendants were jointly recorded in the revenue record (mutation entries) in the year 1978. The learned trial Judge as well as the learned District Judge has rendered a concurrent finding of fact that the plaintiffs have failed to prove their exclusive possession in respect of the suit property and has rendered positive findings that the said property was in joint possession. The learned District Judge while confirming this findings rendered by the learned trial Judge has placed reliance on the mutation entries. It is held by the learned District Judge that in a suit for injunction of this nature, the court can certainly place reliance on the mutation entries for the purpose of ascertaining the established possession of the parties on the date of filing the suit.

13. Though this court has formulated five substantial questions of law, Mr.Gokhale, learned counsel for the appellants fairly states that main issue for consideration of this court is whether mutation entries could be considered by the learned trial Judge as well as the Appellate Court for the purpose of rendering a

findings whether the property was in joint possession of the plaintiffs and the defendants or not. He submits that this court can thus answer the substantial question of law formulated in paragraphs 1,2, 4 and 5.

14. Supreme Court in case of State of ***Andhra Pradesh and others vs. Star Bone Mill and Fertiliser Company (2013) 9 SCC 319*** has held that entry in revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under section 110 of the Evidence Act. The Supreme Court has adverted to its earlier judgment in case of ***Gurunath Manohar Pavaskar vs. Nagesh Siddappa Navalgund (2007) 13 SCC 565*** in which it was held that the revenue record is not a document of title. It merely raises a presumption in regard to possession.

15. In case of ***Smt.Sawarni vs. Smt.Inder Kaur and others AIR 1996 SC 2823*** it is held that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

16. Supreme Court in case of ***Balwant Singh and another vs. Daulat Singh (dead) by LRS. and others (1997) 7 SCC 137*** has held that a party is not divested of his title in the suit property as a result of mutation entry.

17. Supreme Court in case of ***Narasamma and others vs. State of Karnataka and others (2009) 5 SCC 591*** has held that it is true that the entries in the revenue record cannot create any title in respect of the land in dispute, but it certainly reflects as to who was in possession of the land in dispute on the date the name of that person had been entered in the revenue record. In this case the entry in the

revenue record which was in the joint name of the parties was challenged by the appellant herein before the Collector, Sangli who passed an order thereby confirming the said mutation entry by his decision dated 14th December, 1984. The party had produced a certified copy of the said order passed by the learned Collector Sangli at Ex.48 before the learned trial judge. Admittedly the suit was filed on 29th September, 1978 when the suit lands were standing in the name of the parties jointly in the revenue record. The learned trial judge has also rendered a finding of fact that the suit lands were mostly used as a grazing land and the plaintiffs and the defendants were having joint possession in the suit land. The said finding of the learned trial judge has been confirmed in the order passed by the lower appellate Judge.

18. In my view mutation of a property in a revenue record does not create or extinguish title. It only enables the person in whose favour the mutation is ordered to pay the land revenue in question. The judgment of Supreme Court in case of ***Gurunath Manohar Pavaskar (supra)*** holding that the revenue record is not a document of title and is merely raises in regard to possession squarely applies to the facts of this case.

19. In my view even if the entry in the revenue record does not create any title in respect of the land in dispute, the court can rely upon the entry in the revenue record which would reflect as to who was in possession of the land in dispute on the date when the name of that person had been entered into revenue record. In my view the said judgment of Supreme Court in case of ***Narasamma and others (supra)*** squarely applies to the facts of this case. In my view the title of the plaintiffs in the agricultural land could not be decided solely on the basis of mutation entry effected by the revenue authority. The court however can consider

the entry in the mutation entries for the purpose of rendering the findings of possession. The substantial question nos. 1 and 2 of law formulated by this court are answered accordingly.

20. In my view though the appeal court has made a passing observations about the title in respect of the suit property, the same was beyond the prayers made by the plaintiffs and is thus without jurisdiction and contrary to law. In my view since the findings rendered by both the courts below on the issue of joint possession are concurrent findings and are not perverse, no interference with such concurrent findings is permissible under section 100 of the Code of Civil Procedure, 1908.

21. Insofar as substantial question of law formulated in paragraph (4) is concerned, the trial court as well as the lower appellate court has not decided the exclusive possession of the parties only on the basis of the entry in the record of right but is based on the oral evidence led by the parties. In my view the findings of both courts below that the parties in joint possession is not perverse. The substantial question of law no.4 is thus answered in negative.

22. Insofar as substantial question of law of paragraph (5) is concerned, the findings rendered by the both courts below that the plaintiffs had failed to prove their exclusive possession in respect of the suit properties is based on the evidence and also based on the entry in the revenue record and such findings of fact are not perverse. Both courts below have not erred in law in rendering such finding of law. The said substantial question of law is accordingly answered in negative.

23. Second appeal is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]