

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 135 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 269 OF 2015
IN
SECOND APPEAL NO. 135 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 Dnaynu Nalawade,
Resident of Kavalpur, Taluka Miraj
District – Sangli

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

: V/S :

1. Tukaram Krishna Nalawade
since deceased through LRs

A. Smt. Sonabai Tukaram Nalawade
Age 72 years, Occupation Household
Resident of Ambrai Mala, Kavalpur
Taluka- Miraj, District- Sangli

2. Bapu Krishna Nalawade
Age : 70 years, Occupation : Agriculturist
residents at 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.

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. 327 of 2011 and set aside the judgment and decree dated 2nd July, 2011 passed by the trial Court in Regular Civil Suit No. 52 of 1997. The impugned order also allowed the

counter-claim filed by the original defendants and restrained the appellants from obstructing possession of defendant no.1 of the suit properties, except for Gat No. 2217.

2). One Dnyanu, the original plaintiff filed the suit against his brothers, Tukaram, original defendant no.1 and Bapu, defendant no.2 for a declaration of his title to the suit properties described at para-1 of the plaint and for a permanent injunction to restrain them from disturbing his possession thereof. 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 facts alleged by the original plaintiffs in the plaint is that, he was the owner of six suit properties described at para-1 of the plaint, having received the same after partition of the joint family properties on 10th November, 1989. Since then, he was independently cultivating the same and enjoying the benefits therefrom. After the death of the father of the parties, original defendant no.1 was acting as Karta of the Joint Family property. The father had, by conditional sale, sold the properties to one Godbole and had continued in possession thereof as the tenant. He was also the agricultural tenant in respect of the land belonging to one, Bapurao Chintaman Apte. On the death of

the father, name of original defendant no.1 was mutated in the revenue records as the Karta of the Joint Family property. All the three brothers had been cultivating the lands jointly. However, because of the disputes and differences amongst the wives of the brothers, they started residing separately and partitioned the agricultural lands on 10th November, 1989. During partition, the lands described at para-1 of the plaint, came to the share of the original plaintiff. The other brother, respondent no.2 also received an equal share in the joint family properties. He had filed Regular Civil Suit No. 649 of 1991 against original defendant no.1 for a permanent injunction for protection of his possession of the properties. That suit has been decreed. Revenue records have also been mutated in the favour of defendant no.2. But as regards the original plaintiff, despite partition, the revenue records were not mutated in his favour and the name of original defendant no.1 continued therein. The original plaintiff alleged that, taking advantage of the situation, original defendant no.1 started disturbing his possession and cultivation of the suit properties. The plaint also refers to the land at C.T. Survey No. 1632, Hissa No.1B admeasuring 1 Hectare 80 Ares owned by one, Jankibai Ramchandra Kulkarni. Original defendant no.1 was, as the Karta of the Joint Family property, noted as the agricultural tenant in respect of the land. The proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act" for short) were

pending at the relevant time and the price of the land was yet to be decided. Therefore, the name of original defendant no.1 continued as the protected tenant in respect of the land. The original plaintiff claimed that all the three brothers were cultivating that land jointly and the same was to be partitioned after the price of the land was fixed.

4). The suit was contested by both the defendants. Defendant no.2 denied that, after the death of the father, original defendant no.1 was acting as the Karta of the joint family. He denied that, father of the parties had by conditional sale sold the properties to Godbole and had accepted tenancy in respect of the land. He also denied that, the father was an agricultural tenant in respect of the land of Baburao Apte. He further denied the partition on 10th November, 1989.

5). As regards original defendant no.1, he also denied the entire case of the plaintiff. He contended that, he was, in his individual capacity, the agricultural tenant in respect of the suit properties and had purchased the same after the price of the land was fixed under Section 32G of the Act. He denied that, the parties were joint until 10th November, 1989. According to him, the parties had never resided together and were always residing separately. After the death of original defendant no.1 when the plaint was amended, defendant no.1 his widow

filed additional written statement alleging that during the lifetime of original defendant no.1, there was an attempt on the part of plaintiff no.1 to take forcible possession of the suit properties and in the incident, original defendant no.1 had sustained serious injuries. A complaint had been filed of the incident with the police. She alleged that, even thereafter, original plaintiff no.1 was disturbing possession of the defendants in respect of the suit properties and filed a counter-claim seeking a permanent injunction to restrain the plaintiffs from disturbing her possession.

6). The trial Court, at para-18 of its judgment and decree noted the admission by the defendants in respect of one of the suit properties i.e. the land at Block No.2217. The defendants admitted the title of the plaintiffs to that property. Therefore, the suit to that extent was decreed on admission. As regards the remaining properties, the trial Court, on appreciation of the oral, as well as, documentary evidence before it, held that the plaintiffs are the owners in respect of the suit properties and have been in its possession which possession was being obstructed by the defendants and decreed the suit. It dismissed the counter-claim holding that the defendants are not entitled to the relief of perpetual injunction because they were not in possession of the suit properties. One of the arguments of the plaintiffs before the trial Court, as well as, later before

the appeal Court was that, in the proceedings under Section 32G of the Act, in respect of the land at Kawalpur bearing Survey No. 457/3 and 457/4, the certificate under Section 32M had been issued in the name of original defendant no.1. In the said proceedings, the statement of original defendant no.1 was recorded in which he described himself as the Karta of the Joint Family. The trial Court accepted the argument as admission by original defendant no.1 of existence of the joint family and original defendant no.1 being Karta of the joint family. The Appellate Court, however, perused the document and noticed that the words, "Tukaram being the Manager of the Joint Family" had been inserted in the original document in between the two lines and there were no initials against the insertion. It therefore disbelieved the evidence. The Appellate Court, referred to another proceedings under Section 32G of the Act, wherein original defendant no.1 was not shown as the Karta of the joint property. It next noted that the evidence led by the plaintiffs of one, Pandurang was entirely hearsay. Further, in the cross-examination, he had admitted that there was no property in the name of Krishna, the father and thus there was no ancestral property in existence. One more relevant circumstance noted by the appellate Court is that, when the land was being purchased, original plaintiff no.1 had not contributed to the price of the land. Infact, the witness of the plaintiffs had admitted that, the amount had been paid by original

defendant no.1. It also noted that, infact there was evidence on record which showed that the brothers were not joint and they had been separated long back. On the above evidence, the Appellate Court, held that the ancestor, Krishna owned no properties. Hence, there was no ancestral property in the hands of the plaintiffs and set aside the decree.

7). The defendants, on the other hand, had produced the documents establishing separate possession in respect of the suit properties, except Gat No. 2217. There was also the evidence as regards the incident alleged by defendant no.1 in which original defendant no.1 was assaulted and the complaint to the police had been filed. On the basis of this evidence, the Appellate Court allowed the counter-claim.

8). Perusal of the grounds raised by the plaintiffs in the Second Appeal shows that the same essentially pertain to appreciation of evidence on record of the District Court. In my opinion, there is no perversity whatsoever in the appreciation. It is a plausible view that can be taken of the evidence. In any case, 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 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.

9). In view of the above there is no substantial question of law arising for the consideration of the Court. Hence, the Second Appeal is dismissed.

10). In view of dismissal of the Second Appeal, Civil Application No. 269 of 2015 does not survive. The same is disposed off as infructuous.

(SMT. R.P. SONDURBALDOTA, J)