IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.510 OF 1992
IN
CIVIL APPEAL NO.612 OF 1988
IN
SPECIAL CIVIL SUIT NO.104 OF 1981

The State of Maharashtra .... Appellant
(Through the Collector of Solapur) (Ori. Defendant)

Vs.

Ashok Shankarrao Mahindrakar .... Respondent

Mr. Rajan Pawar, AGP for the Appellants.
None for the respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 22nd January, 2015

P.C. :

1 This appeal is by the State Government for challenging the judgment and order dtd.17th September, 1991 allowing the appeal preferred by the respondents and decreeing the suit filed by him. The trial court had by it's judgment and order dtd.1st September, 1987 dismissed the respondent's suit for a declaration that he is the owner of the suit property and for mandatory order directing the appellant to delete the charge on the suit property for recovery of sales-tax dues

payable by the partnership firm by name "M/s Solapur Stone Syndicate", Solapur.

2 The brief statement of facts leading to the appeal is as follows:

On 26th September, 1980 an entry was made in the property register card relating to the suit property for a charge in the sum of Rs.26,280/- plus penalty for sales-tax dues for the period 22nd October, 1968 to 18th October, 1978. In the suit filed by him, the respondent contended that since he is neither a partner of the firm "M/s Solapur Stone Syndicate", Solapur nor concerned with the business of the firm in any way, the entry of charge made in the property register was illegal. The appellant contested the suit alleging that when the property was purchased in the year 1965, the respondent was minor and therefore, the consideration for the purchase of the property ought to have come from the father of the respondent, who was the partner in the firm. It was further alleged that the consideration for the suit property was paid from the income of joint Hindu family property without stating the details of the joint family, the property of the joint family and the income of joint family available in the year 1960, at the time of purchase of the property. As per the record, the father of the respondent was a partner of "Solapur Syndicate Depot" alongwith his father-in-law and brother-in-law. The evidence on record shows that the consideration for purchase of the house had come from the grandfather and maternal uncle of the respondent, both have so stated in their evidence. The father-in-law deposed that he had given an amount of Rs. 10,000/- to the father of the respondent for purchasing the suit property in the name of the respondent. The maternal uncle of the respondent also deposed about the financial assistance given to the father of the respondent. There is further evidence that the respondent was in fact residing with his grandfather and maternal uncle for the purpose of schooling. The appellate court, in it's impugned judgment and order accepted the evidence of the grandfather and maternal uncle of the respondent about gift of sum of Rs.20,000/- to the father of the respondent for purchase of the suit property in the name of the respondent. In the absence of any evidence as regards existence of the joint Hindu family, income of the joint Hindu family, the only inference that could be drawn as regards the ownership of the suit property was the inference drawn by the lower appellate court. Thereafter the appellate court noted that the appellant had not followed proper procedure before recording entry of the sale-tax dues on the suit property. There is no evidence to show that the respondent was issued statutory under Section 38(B)(1) and (2) of the Bombay Sales-Tax Act, 1959 before recording entry in the property card register. The appellant had claimed that it had served notice upon the respondent and referred to the reply of the respondent. The evidence however shows that the response was by the father in his independent capacity and not by the respondent. Thus the action taken by the appellant was also without following the procedure laid down for recovery in the tax dues as the arrears of land revenue. Considering these facts, there is no infirmity whatsoever in the impugned judgment and order. The appeal is therefore dismissed.

(Smt. R.P. SondurBaldota, J.)