

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.854 of 2012
(Ramchandra Gopala Kende and another v. Santaji Yashwant Laigude)
Along with
Second Appeal No.630 of 2011
(Ramchandra Gopala Kende v. Abu Yashwant Ligude and another)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri S.M. Gorwadkar, Senior Advocate for Appellant.
Shri Rajesh Maravoor, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Dated : 1st July, 2015

1. The appellant in both these appeals, filed a Regular Civil Suit No.155 of 2001 for a declaration that the sale-deed dated 29-5-1978 in respect of 71.7 R of land out of Gat No.524 executed by the defendant No.1 Abu Laigude in favour of the defendant No.2 Santaji Laigude, therein, be declared as null and void. The respondent No.1 in Second Appeal No.854 of 2012, Santanji Laigude filed Regular Civil Suit No.369 of 2001 for removal of encroachment and possession of 52 R of land in Gat No.524 from the appellant herein. Regular Civil Suit No.155 of 2001 filed by the appellant was dismissed, whereas Regular Civil Suit No.369 of 2001 filed by the respondent No.1 in Second

Appeal No.854 of 2012, was decreed. The appellant is directed to hand over the possession of 52 R of land to the respondents. The Appellate Court has maintained the decision of the Trial Court in both these suits. Hence, the appellant is before this Court in these second appeals.

2. The undisputed factual position is that the appellant claims to be the owners of Survey No.95/13, which was re-numbered after consolidation as Gat Nos.523 and 524, admeasuring 1 acre and 24 R, on the basis of the registered sale-deed executed in favour of his father on 13-2-1920. On the basis of the registered sale-deed dated 29-5-1978, the respondents claim to be the owners of 71.7 R of land out of Survey No.95/15, which was re-numbered as Gat No.524 after consolidation. The Courts below have held that the challenge by the appellant in Regular Civil Suit No.155 of 2001 is to the consolidation proceedings and hence it is barred under Section 36A of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947. The Courts below have held that the appellant is found to be in possession of 52 R of land out of Survey No.95/15 (Gat No.524) belonging to the respondent Santaji Laigude, and hence the decree for possession has been passed. The finding of encroachment of 52 R of land is based upon the evidence of the Surveyor.

3. The contention of the learned Senior Advocate Shri Gorwadkar for the appellant is that the principle applied by the Courts below that the civil suit was barred by Section 36A of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act equally applies to the case of the respondents in respect of 52 R of land. He has further urged that the appellant is in continuous possession of the lands from the date of the sale-deed and, therefore, the presumption of title in respect of the lands in question lies in favour of the appellant.

4. The appellant has not produced on record the sale-deed dated 13-2-1920. In the absence of such sale-deed, it is not possible to ascertain the exact area of Survey No.95/13 owned and possessed by the appellant. Relying upon the sale-deed dated 29-5-1978 produced by the respondents, the Courts below have held that the sale was in respect of 71.7 R of land and on the basis of the Surveyor's report, the finding of fact is recorded that the appellant has encroached upon 52 R of land. In view of this, so far as the question of encroachment is concerned, it does not touch any aspect under the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, and, therefore, the bar under Section 36A of the said Act is not at all attracted.

5. The appellant has failed to produce on record the

registered sale-deed dated 13-2-1920 and, therefore, no substantial question of law arises out of the dismissal of Regular Civil Suit No.155 of 2001 by the Court below.

6. Consequently, both these second appeals are dismissed.

Judge.

Lanjewar