

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 305 OF 2005
WITH
CIVIL APPLICATION NO. 548 OF 2005 IN SA/305/2005**

1. Ananda Natha Sawant, since deceased, through his L.Rs. ..Appellants
1A Mangesh Ananda Sawant
and Ors.

Vs

1. Smt. Vithabai Natha Sawant, since deceased represented by heirs: .. Respondents
2. Sout Gangubai Dhondiram
Yadav and Ors.

Ms. S.S.Gokhale, Advocate for Appellants.
Mr. A.M.Kulkarni, Advocate for Respondents no.2 and 4.
Mr. Vikas Mali with Mr. Dilip Shinde, Advocate for Respondents No.2, 3A to 3D.

CORAM : R.G.KETKAR,J.
DATE : 25/03/2015

PC:

1. Heard Ms. S.S.Gokhale, learned counsel for the appellants, Mr. A.M.Kulkarni, learned counsel for respondents no.2 and 4, and Mr. Vikas Mali, learned counsel for respondents no.3A to 3D at length.

2. By this Second Appeal under section 100 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the original defendant no.1 has challenged the Judgment and decree dated 23.11.1989 passed by the learned Civil Judge, Jr. Dn., Vita, in Regular Civil Suit No.178 of 1984 as also the Judgment

and decree dated 27.1.2005 passed by the learned District Judge, Sangli, in Regular Civil Appeal No.67 of 1990. By these orders, the Courts below decreed the suit instituted by the original plaintiffs for declaration that they have half share in the suit properties, as more particularly described in paragraph 1 of the Plaint, except Gat No.479. The Courts below further declared that plaintiff no.1 is entitled to partition and separate possession of her half share in respect of all the properties described in paragraph 1 of the Plaint, except land Gat No.479 which is her absolute property. The Courts below also declared that plaintiff no.1 is an absolute owner of land bearing Gat No.479.

3. In support of this Appeal, Ms. Gokhale submitted that on 5.7.1947, Natha, husband of plaintiff no.1-Vithabai, died. Plaintiff no.1- Vithabai adopted defendant no.1-Anand Sawant (appellant herein-defendant no.1) by a registered adoption deed dated 13.4.1948. In 1950, plaintiff no.1-Vithabai made an application for transferring all the lands in the name of defendant no.1. In pursuance thereof, mutation entry no.10340 dated 12th July, 1948 was certified. She submitted that by giving application and transferring all the suit properties in favour of defendant no.1, plaintiff no.1 Vithabai had surrendered her right, title and interest in the suit

properties. She submitted that the surrender could be effected in any process. In support of her submissions, she relied upon the decision of Privy Council in Bhagwant Koer Vs. Dhanukdhari Prasad, AIR 1919 Privy Council 75 and in particular the following passage:

“The power of a Hindu widow to surrender or relinquish her interest in her husband's estate in favour of the nearest reversioner at the time has often been considered and was fully dealt with by the Board in the recent case of Rangasami Gounden v. Nachiappa Gounden 1. As pointed out in that case, it is settled by long practice and confirmed by a series of decisions that a Hindu widow can renounce the estate in favour of the nearest reversioner, and by a voluntary act efface herself from the succession as effectively as if she had then died. This voluntary self-effacement is sometimes referred to as a surrender, sometimes as a relinquishment or abandonment of her rights; and it may be effected by any process having that effect, provided that there is a bona fide and total renunciation of the widow's right to hold the property. In the present case there was indeed no formal surrender by the widow of her estate; but there was an express agreement, binding upon her, that for considerations which appeared to her sufficient she would abandon the claim which at the time she had a good right to make and would have no right, claim or demand in respect of the estate of her late husband. It is true that the documents were drawn up on the footing, not of a surrender of an acknowledged right, but of an admission that the right did not exist; but in substance, and disregarding the form, there was a complete self-effacement by the widow which precluded her from asserting any further claim to the estate. The question is no doubt one of difficulty but upon the whole their Lordships have come to the conclusion that the execution of the two ekrarnamas, followed by the acceptance for thirty years of maintenance under the terms of those documents, amounted to a complete relinquishment by Anandi Koer of her estate in favour of

Mahabir, and accordingly that the title of Mahabir's representatives is established and the plaintiffs' action should have been dismissed on this ground. "

She further submitted that after execution of the registered adoption deed dated 10.4.1950 defendant no.1 became owner of the properties, except the property which was given to plaintiff no.1 under the document styled as 'Potgi Patra' i.e.Maintenance Deed dated 10.4.1950. She further submitted that defendant no.1 is continuously in possession of the suit property adverse to the interest of plaintiff no.1. She invited my attention to Written Statement filed by defendant no.1 and in particular paragraphs 1, 4 and 5. In paragraph 4, defendant no.1 contended that he became owner by adverse possession. In paragraph 5, defendant no.1 pleaded ouster of plaintiff no.1. For all these reasons, she submitted that Appeal requires consideration as it involves substantial questions of law.

4. On the other hand, Mr. Kulkarni and Mr. Mali supported the impugned orders. They submitted that though defendant no.1 set up plea of adverse possession as also plea of ouster, he did not enter into witness box. No witnesses were examined by defendant no.1. In other words, defendant no.1 did not establish all facts necessary to establish his adverse

possession as also plea of ouster. They further submitted that the Courts below, after appreciating the evidence on record, have concurrently decreed the suit and , therefore, no case is made out for invocation of powers under section 100 of C.P.C.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Relying upon the application made by Vithabai in the year 1950 and mutation entry no.10340, Ms Gokhale submitted that plaintiff no.1-Vithabai had relinquished her right, title and interest in the suit properties. It is not possible to accept this submission. It is settled principle of law that mutation entry does not confer ownership rights. That apart, it is not pleaded and proved by defendant no.1 that plaintiff no.1 had relinquished her right, title and interest either orally or in writing. No such case is made out in the Written Statement. As noted earlier, defendant no.1 did not enter into witness box. The plea of surrender, therefore, was not substantiated. On the basis of the application of 1950 and mutation entry no.10430, it is not possible to accept the submission that plaintiff no.1 had relinquished her right, title and interest.

6. As far as plea of adverse possession as also the plea of ouster is concerned, in the case of Dr. Mahesh Chand Sharma

Vs. Smt. Raj Kumari Sharma, AIR 1996 Supreme Court 869, the Apex Court held that a person pleading adverse possession has no equities in his favour, since he is trying to defeat the right of the true owner. It is for him to clearly plead and establish all the facts necessary to establish his adverse possession. I, therefore, do not find that defendant no.1 has established his plea of adverse possession as also the plea of ouster. In that Judgment, the Apex Court also considered Section 14 of the Hindu Succession Act, 1956 and observed that the word "possessed" in Section 14 means right to possess and not actual physical possession. In view thereof, I do not find that the decision of Bhagwat Koer (supra) assists defendant no.1.

7. The Courts below after appreciating the evidence on record have concurrently decreed the suit. In my opinion, Second Appeal does not raise any question of law, much less any substantial question of law. Hence, Appeal fails and the same is dismissed. In view of dismissal of the Appeal, Civil Application No.548 of 2005 does not survive and the same is dismissed.

(R.G.KETKAR, J.)