

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.838 OF 2012

1. Ramakant Shivaji Divekar
age 46 years, occ. Agriculture
2. Shivaji Gangaram Divekar (died)
Age 76 years Occ. Nil.
Both the Appellants are residing at
Village Warwand, Tal. Daund,
Dist. Pune.

2(a) Suryakant Shivaji Divekar
age 40 years, occ. Agriculture
residing at Village Warwand.
Taluka. Daund, Dist. Pune.

2(b) Suneeta Jalindar Randave
age 46 years. Occ. Agriculture.
Residing at Sarthak Niwas.
Bhopkhel, Dist. Pune.

.. Appellants.

Vs.

1. Yeshwant Bajirao Divekar
age 61 years, occ.
2. Shankar Bajirao Divekar
age 59 years. Occ.
Both the respondents are residing
at Village Warwand, Tal Daund.
Dist. Pune.
3. Shri Chandrakant Shivaji Divekar.
Age 52 years. Occ. Agriculture.
R/at Warwand, Tal. Daund,
Dist. Pune.

4. Sau. Subhadrabai Shivaji Divekar.
Age 75 years, occ. Household
R/at Village Warwand, Tal Daund,
Dist. Pune.

.. Respondents.

WITH

SECOND APPEAL NO.90 OF 2013

1. Chandrakant Shivaji Divekar
age 52 years, occ. Agriculture
R/at Warwand, Tal. Daund, Dist. Pune.

2. Sau. Subhadrabai Shivaji Divekar.
Age 75 years Occ. Household
R/at Village Warwand, Tal. Daund,
Dist. Pune.

... Appellants.

Vs.

1. Yeshwant Bajirao Divekar
age 61 years, occ.
2. Shankar Bajirao Divekar
age 59 years. Occ.
Both the respondents are residing
at Village Warwand, Tal Daund.
Dist. Pune.
3. Ramakant Shivaji Divekar
Age 46 years. Occ. Agriculture.
4. Shivaji Gangaram Divekar.
Age 76 years, occ. Nil
R/at Village Warwand, Tal Daund,
Dist. Pune.

.. Respondents.

Mr. Shriram S. Kulkarni, for appellant in S.A. No.838/12 and for respondent Nos. 3 & 4 S.A. 90/13

Mr. Rahul Kadam, for respondent Nos. 1 & 2 in S.A. No.838/12 and S.A.No.90/13

Mr. Sachin Chavan, for respondent Nos. 3 & 4 in S.A. No.838/12 and for appellant in S.A. No.90/13.

Coram : Smt. R.P SondurBaldota, J.

Date : 25th February, 2015

JUDGMENT :

1. This is a common order on the above two second appeals preferred to take exception to the concurrent findings of the Courts below on the issues arising between the parties in Regular Civil Suit No.273 of 2001.

2. Second Appeal No.838 of 2012 is filed by the original defendants. Original defendant No.2 (Appellant No.2) Shivaji died pending the present appeal and his heirs have been brought on record. Second Appeal No.90 of 2013 is filed by the added respondents. Respondents No.1 and 2 to both the appeals are the original plaintiffs. For convenience the parties to the suit shall hereinafter be referred by their original nomenclature and the appellants to Second Appeal No.90 of 2013 as the “added respondents”.

3. The plaintiffs filed the suit seeking declaration of their title to the suit property i.e. the agricultural land at Gat No.1253/C/1 admeasuring 40 Ares situate at Varvand, Tal. Daund, Pune and for perpetual injunction to restrain the defendants from disturbing their possession of the suit land. By its judgement and order dated 21st April, 2006, the Trial Court decreed the suit. Being aggrieved by the judgement and decree, the defendants preferred appeal to the District Court being Civil Appeal No.101 of 2006. During the pendency of the appeal, the added respondents made application vide Exhibit 17 for impleading themselves as parties to the appeal. These respondents are the second son of defendant No.2 and his wife. In their application, they claimed that the suit property was ancestral property and as such, both had a share in it alongwith the defendants. They alleged that the plaintiffs had suppressed this fact from the Court and had deliberately not impleaded them as parties to the suit. Apparently, this application was served only upon the defendants and not upon the plaintiffs. The defendants by their say endorsed on the application stated that they have no objection to implead the added respondents as the respondents to appeal. Resultantly, by the order passed on very day, the added respondents

were impleaded as the respondents to the appeal. These respondents then filed application under Order 41 Rule 27 of Code of Civil Procedure vide Exhibit 21 for permission to produce additional evidence. The defendants again did not take any objection to the application. However, the plaintiffs contested application with submission that the applications filed by the added respondents for their impleadment as also for production of additional evidence was an act in collusion with the defendants. It was also submitted by the plaintiffs that there was no need to implead the added respondents to the appeal, as they are not concerned with the suit property. It was pointed out by the plaintiffs that there was already partition between the appellants and the added respondents. The District Court, however, by its order dated 10th December, 2010, allowed the application and permitted the added respondents to produce the documents with a reasoning that the documents sought to be produced were public documents. Thereafter by the judgment and order dated 29th July, 2011, the appeal was dismissed.

4. The brief factual background of the appeal is as follows :

The suit property was originally owned by defendant No.2-Shivaji. The plaintiffs were owners of the agricultural land

admeasuring 13 Ares in Block No.1679 at Varvand. The plaintiffs and Shivaji decided to exchange their respective lands. Though the suit property admeasures 40 Ares and property earlier owned by the plaintiffs admeasures only 13 Ares, they were equal in terms of price, because the suit land is located at a long distance from the Highway, whereas the other land is adjoining the Pune-Solapur Highway. In the Year 1991, Shivaji moved application before Tahsildar for recording the exchange of lands. The transaction came to be entered into Revenue Records "as partition made as per Mutation entry No.3315" effected in the year 1991 itself. Since then, both the sides started occupying the respective lands. The plaintiffs cultivated sugarcane and Shevanti flowers on the suit land. They alleged that on 01.12.2001, the defendants threatened them that they will not allow the plaintiffs to carry sugarcane to the Sugar Factory. Therefore, the plaintiffs filed suit for the reliefs as described above. The defendants contested the suit denying the transaction of exchange of the properties between Shivaji and the plaintiffs. They alleged that Shivaji had as far back on 20.06.1969 purchased the agricultural land at Survey No.290/17 adjoining Pune-Solapur Highway. Therefore, there was no question of exchange of properties

with the plaintiffs. The defendants also alleged that mutation entry No.3315 is illegal and Tahsildar had no authority to effect any such partition or exchange. The defendants further alleged that the plaintiffs never owned or possessed or cultivated the suit property.

5. The plaintiffs examined plaintiff No.1 in support of their case and the defendants examined one Suryakant, the other son of Shivaji and one Gopinath Divekar in support of their case.

6. Plaintiff No.1 deposed about exchange of properties, the application by Shivaji to Tahsildar for bringing the exchange of properties on record and the mutation entry effected in the Revenue Records. The Courts below on appreciation of the evidence found that the plaintiffs are the owners of the suit property and as such are in possession thereof. There was threat from the defendants to dispossess them and hence, they are entitled for the decree as sought. There is nothing on record to even remotely indicate that the findings of fact are perverse. The defendants and even the added respondents were afforded ample opportunity to establish title to the suit property, but failed to do so. Thus, there is no substantial question of law arising for consideration in the Second Appeal.

7. It is sought to be argued that any transfer of right, title

or interest in a immovable property worth more than Rs.100/- is required to be by a registered document the plaintiffs and admittedly there is no document executed between the parties for exchange of the properties. Therefore, the suit as filed was not maintainable. Besides the documents produced by the plaintiffs on record show the transaction of partition which has not been the case of the plaintiffs. This aspect has been dealt with by the Trial Court paragraph-27 of its judgment and decree. It observes, "it is made clear in the plaint itself and even in the affidavit (Exh 26) of the plaintiffs that, that exchange was showed as partition. For whatsoever reasons, the transaction between the parties was mentioned as partition, the fact remains that that transaction is confirmed by the order Exh. 42 of the competent revenue authority and that order is not at all challenged by the defendants till today." The view taken cannot be faulted with.

8. For the above reasons the Second Appeals are dismissed.

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