

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.600 OF 2013
WITH
CIVIL APPLICATION NO.1415 OF 2013

Anant Balkrishna Sapale and others ... Appellants
Vs.
Pandurang Vasudev Parkar and others ... Respondents

Mr. A. S. Khandeparkar i/b. Khandeparkar & Associates a/w.
Mr. S. C. Chandratre for Appellants.
Mr. V. S. Gokhale for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 22ND APRIL, 2015

ORDER :

Heard Mr. Khandeparkar, learned Counsel for appellant and Mr. Gokhale, learned Counsel for respondent No.1 at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendants No.7 to 10 have challenged the judgment and decree dated 09.07.2013 passed by the learned Principal District Judge, Sindhudurg-Oros in Regular Civil Appeal No.173 of 2007. By that order, the learned District Judge allowed the Appeal preferred by the respondent No.1, hereinafter referred to as the plaintiff, and dismissed the cross-objections (exhibit-13). The learned District Judge modified the decree passed by the learned trial Judge on 12.10.2007. The Suit instituted by the plaintiff is decreed with costs. The learned District Judge declared that the plaintiff and defendants No.11 and 12 are the owners of Survey No.161/18 and 161/19 as more particularly described in paragraph 1 of the plaint. Defendants No.1 to 10 were permanently restrained from disturbing the possession of plaintiff and defendants No.11 and 12 over these lands.

Mr. Khandeparkar submitted that the controversy in the present Second Appeal is restricted only qua Survey No.161, Hissa No.19.

3. In support of this Appeal, Mr. Khandeparkar strenuously contended that the learned District Judge committed serious error in holding that the proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act') are nullity. He submitted that having regard to Sections 85 and 85-A of the Act, Civil Court has no jurisdiction entertain, try and decide any issue pertaining to the tenancy. He submitted that in proceedings under Section 70(b) of the Act filed by Balkrishna Appa Sapale (ancestor of defendants No.7 to 10) against the father of defendant No.1, father of defendant No.3, father of defendant No.4 and father of defendant No.2, with the consent of the ancestors of defendants No.1 to 6, Balkrishna Appa Sapale was declared as a tenant of Survey No.161/19 on 08.01.1973. Subsequently, the said land was sold to defendants No.7 to 10. He submitted that P.W.1 admitted that name of Balkrishna Appa Sapale was recorded in respect of the said land in the year 1973. The land was sold in favour of Balkrishna Appa Sapale under the provisions of the Act in the year 1973-1974. In other words, he submitted that P.W.1 admitted that he acquired knowledge about these proceedings in the year 1973. The Suit is instituted for declaration in the year 2001. The learned trial Judge rightly held that the Suit is governed by Article 58 of the Indian Limitation Act, 1963 (for short 'Limitation Act'), and is therefore, barred by limitation.

4. Mr. Khandeparkar submitted in the alternate that defendants No.7 to 10 are in possession for more than 30 years and thus, become owners by adverse possession. He, therefore, submitted that Appeal requires consideration as it involves substantial questions of law.

5. On the other hand, Mr. Gokhale supported the impugned order. He submitted that defendants No.7 to 10 have denied title of the plaintiff. They, therefore, cannot claim acquisition of ownership by way of adverse possession. He further submitted that the Suit is instituted for declaration and injunction and in the alternate, for possession. In view thereof, Article 58 is not applicable and since the plaintiff has claimed possession, it is governed by Article 65 of the Limitation Act. He invited my attention to paragraph 14 of the District Court's judgment and submitted that the ancestors of defendants No.1 to 6 participated in the proceedings under Section 70(b) of the Act and with the consent of the ancestors of defendants No.1 to 6, Balkrishna Appa Sapale was declared as a tenant. The learned District Judge considered sale deed dated 15.12.1926 at exhibit 130 executed by Dattatrya Dinkar Karnik in favour of Appa Gopal Parkar (son of deceased Gopal Parkar) in respect of the suit land and other properties. On 12.03.1927, Appa Gopal Parkar redeemed the property from one Rajaram Babu Bandiwadekar and obtained possession of the suit land with other other properties. He further submitted that Babaji had instituted Regular Civil Suit No.242 of 1908 for the declaration that the Court auction held on 04.06.1880 is not binding on his half share. The suit land was not included in that Suit. He submitted that the learned District Judge held that the entire tenancy proceedings under which defendants No.7 to 10 are claiming right as a tenant purchaser are nullity as the Tenancy Court had passed the order behind the back of the plaintiff and his family members and with the consent of the ancestors of defendants No.1 to 6, who had no right, title and interest in the suit land.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the written statement filed by defendants No.7 to 10

shows that they denied title of the plaintiff. In view thereof, defendants No.7 to 10 cannot claim acquisition of ownership by adverse possession. As noted earlier, plaintiff had instituted Suit for declaration and injunction and in the alternate, for possession. The learned District Judge held that the Suit is governed by Article 65 of the Limitation Act as the Suit is for possession on the basis of title and the Suit can be filed within 12 years when the possession of defendant becomes adverse. Defendants No.7 to 10 have failed to establish their adverse possession. I do not find that the learned District Judge has committed any error in holding that the Suit is within limitation.

7. As far as the contention that the Civil Court cannot decide the issue of tenancy as also cannot sit in appeal over the order of the tenancy court is concerned, I do not find any merit in this submission. This aspect is concerned by the learned District Judge in paragraph 14 of the judgment. The learned District Judge took into account the sale deed dated 15.12.1926 (exhibit-130) as also the mortgage deed dated 12.03.1927 (exhibit-131). In short, ancestors of defendants No.1 to 6 had no right, title and interest in respect of the suit land. In spite of that, they participated in the tenancy proceedings and with their consent, Balkrishna Appa Sapale, ancestor of defendants No.7 to 10 was declared as a tenant on 08.01.1973. The learned District Judge rightly held that the tenancy proceedings are nullity and by no stretch of imagination, it can be held that defendants No.7 to 10 have any right or interest in the suit land either as a tenant or as a tenant purchaser. I do not find that the learned District Judge has committed any error in recording that finding. Defendants No.7 to 10 were not in a position to demonstrate that the findings recorded by the learned District Judge are perverse being based upon no evidence or they are contrary to the evidence on record. In view thereof, no question of law much less any substantial question of

law arises in this Appeal. Hence, the Second Appeal fails and the same is dismissed. In view of the dismissal of the Second Appeal, nothing survives in Civil Application No.1415 of 2013 for stay and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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