

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 894 of 2012

(Visbhnu Khandu Gade vrs. Suresh Sahadu @ Balani
Gade and another)

Mr. Ashok B. Tajane, Advocate for appellant
Shri Dilip Bodake, Advocate, for respondents.

CORAM : R.K.Deshpande, J.
DATED : 09th JUNE, 2015.

P.C.

The trial court dismissed Regular Civil Suit No. 107 of 1998. The appellate Court has allowed the Regular Civil Appeal No. 769 of 2007 on 13.07.2012. The suit filed by the plaintiff has been decreed holding that the plaintiff is the owner and possessor of the portion of land Gat Nos. 615 and 618, described in para 1 of the plaint and the defendants are perpetually restrained from causing obstruction to the plaintiff over the suit property. The original defendants are before this Court in this second appeal.

The question involved before the courts below was in respect of the property, land Gat Nos. 615 and 618. The trial court dismissed the suit relying upon the entries in 7/12 extract in the name of Khandu, the predecessor in title of the defendant. Mutation entry No. 673 indicates the name of Khandu as the owner of the property since 1943. The appellate Court has reversed the finding of the trial court relying upon the decision in Regular Civil Suit No. 662/36 between three brothers, namely Dhondur, Khandu and Mahadu, the sons of Ramji. The defendants are sons of Khandu, whereas plaintiffs

are sons of Dhondu. The appellate Court has held that in terms of the decree for partition passed in the said suit, half share in the suit land was allotted to Khandu and Dhondu, the two real brothers. The appellate Court has held that while carrying out the mutation entry No. 673 in the year 1943, a mistake was committed in excluding the name of Dhondu from 7/12 extract in respect of the suit property. The appellate Court has further held that the consolidation scheme and the certificate issued therein would be of no help to the defendants to claim that they were the exclusive owners of the suit property.

The learned counsel for the appellant has urged that there was a certificate issued under Section 32M of the Bombay Tenancy and Agricultural Lands Act in favour of Khandu in respect of Survey No. 57/2, which is the present Gat No. 615.

With the assistance of the learned counsels appearing for the parties, I have gone through the evidence of the defendant. It nowhere refers to any such certificate. The suit was not raising any dispute in respect of fragmentation or consolidation of the lands in question. The bar under section 36 of the said Act was, therefore, not attracted. No substantial question of law arises. The second appeal is dismissed.

(R.K.DESHPANDE, J.)