

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 57 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 137 OF 2014
IN
SECOND APPEAL NO. 57 OF 2014

Smt. Devayani Ramesh Shah

.....Appellant

: V/S :

Smt. Nirmal Kuldeep Mundhe & Ors.

.....Respondents

* * * * *

Mr. Makarand Panchakshari, Advocate for the appellant.

Mr. Manoj Mohan Kadam, Advocate for respondent no.1.

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Coram :- Smt. R.P. SondurBaldota, J.

9th February, 2015.

P.C. :-

1). The appellant is original defendant no.1. She challenges the judgment and order dated 6th July, 2013 by which the District Court allowed the appeal preferred by respondent no.1 (original plaintiff no.2) and decreed the suit filed by her. By the decree, the appellant and respondent no.1 are declared as joint owners in respect of the land bearing Gat no.495 admeasuring 1H 79R and Gat No.496 admeasuring

39R situated at Mauje Biloshi, Tal. Wada, District-Thane. The order also declares that the sale-deed dated 23rd September, 1989 executed in favour of the appellant alone in respect of the suit lands is void and not binding upon respondent no.1. The Court, further directed handing over of possession to the extent of 2/3rd portion of the suit land to respondent no.1.

2). The suit as filed originally was Special Civil Suit No. 684 of 1994. Original plaintiff no.1 to it was the father of original plaintiff no.2. During the pendency of the suit, he relinquished his share in the suit land in favour of his daughter and hence was deleted from the proceedings. Later, on its transfer to another Court, the suit came to be numbered as Regular Civil Suit No. 25 of 2001.

3). The facts of the case, stated in brief are that, the appellant, respondent no.1 and her father, Harijansingh Ramditta Mathadu (original plaintiff no.1) purchased the suit lands by two registered sale-deeds dated 2nd April, 1987 from respondents no.2 and 3. Thereafter, the appellant alone applied for mutation of the revenue records and got the suit lands transferred in her name vide mutation entry no.163 and 164. No notice was issued to respondent no.1 and her father about the mutations. It is the case of respondent no.1 that, she and her father are agriculturists and held agricultural lands bearing Survey No.310 at

Selgaon, District-Pune and also ancestral agricultural lands bearing Kheyat no.291, Khasar No. 21/2, 21/3, 21/4, 21/5(1) at Sumesipur, Tahasil-Samarala, Dist. Ludhiyana, State-Punjab. They have been holding these lands as agriculturists since prior to execution of the sale-deeds in respect of the suit lands. The appellant subsequently applied for conversion of the land from agricultural to non-agricultural to the Collector, Thane. During the scrutiny of the papers, it transpired that the suit land was infact purchased by the appellant jointly with respondent no.1 and her father and the mutation entries no.163 and 164 were wrong. The matter was therefore transferred to the Sub-Divisional Officer, Jawahar and R.T.S. enquiry was held in R.T.S Revision No.35/1992. Notices were issued to all the parties. Respondent no.1 and her father, appeared in the matter. After enquiry, the Tahasildar reported that the original owner and Kabjedar of the suit lands are respondent no.1, her father, Vasant Yashwant Nawale and Madhukar Yashwant Nawale. He also repeated that the name of the appellant appearing in 7/12 extracts was fictitiously entered by her. On the basis of the report, the Sub-Divisional Officer cancelled the mutation entries 163 and 164 in respect of the suit lands and gave directions by the order dated 6th February, 1993 to give effect to the sale-deeds of the suit lands in favour of respondent no.1, her father and the appellant. Despite the completed sale of the suit properties jointly to the appellant and

respondent no.1 and her father, there was second sale-deed executed by respondents no.2 and 3 in favour of the appellant. The appellant claims right to the suit properties vide that sale-deed.

4). Respondent no.1 and her father, Harijansingh Ramditta Mathadu filed suit for declaration of their joint title to the suit property and for cancellation of the sale-deed in favour of the appellant. The trial Court dismissed the suit holding that the question whether the respondent no.1 is an agriculturist is required to be decided by the revenue authorities in view of the provisions of Sections 179 and 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 and that since the date of filing of the suit, respondent no.1 had failed to apply for referring the question to the revenue authorities. The lower Appellate Court considered the documents produced by respondent no.1 to hold that respondent no.1 was infact an agriculturist and could have purchased agricultural lands from the vendors. The lower Appellate Court noted that the nature of documents produced by both the sides for establishing their status as agriculturist were same i.e. the 7/12 extracts. The documents produced by respondent no.1 had not been accepted by the trial Court because the extract produced by him does not correctly state his name. Undisputedly, the father of respondent no.1 does not hail from Maharashtra and as a consequence there could be an error in noting the name of respondent no.1. This fact cannot be held against

respondent no.1 so as to deny her title under the registered deed of conveyance. It is to be noted that, neither the vendor nor any other person has any dispute as regards the status of respondent no.1 as an agriculturist. The record shows that the application for mutation of the revenue records was filed by the appellant alone and not jointly with the other purchasers. Therefore, dismissal of that application was on the ground of it's maintainability in the absence of all the purchasers. The learned Appellate Court has considered the other material on record also. It is to be noted that the trial Court had dismissed the suit solely on the finding that respondent no.1 is not an agriculturist. The appellate Court, on re-appreciation of the evidence before the Court has held that, respondent no.1 and her father are agriculturists and there was no pediment for purchase of agricultural land by them. It is a possible finding on the evidence. There is no perversity about it. Thus, there is no substantial question of law arising for consideration of the Court. The Second Appeal is dismissed.

5). With the dismissal of the Appeal, Civil Application No. 137 of 2014 does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)