(sr. no.12)
Tuesday,6/1/2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 360 OF 2014

Shri. Nagnath Kundalik Mali .....Appellant
(Orig. Defendant)

: V/S :

Sou. Parwatibai Dattatraya Gore &anr. .....Respondents

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Mr. I.M. Khairdi, Advocate for the appellant.

Mr. Nitin Dalvi a/w. Mr. Vaibhav Gaikwad, Advocate for respondents no.1 and 2.

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

6th January, 2015.

P.C. :-

1). This Second Appeal arises out of the judgment and order dated 17th August, 2013 by which the lower appellate Court reversed the judgment and decree of the trial Court dated 14th October, 2010 dismissing the suit of the respondents.

2). The brief statement of facts leading to the present appeal is as follows :-

. The respondents are the daughters of one, Dhondabai who died intestate on 3rd September, 2005. She was married to Nagnath Doke, the father of the respondents. Apparently, there was divorce between the two as per the custom in their community. The suit property had devolved upon Dhondabai and her sister Latikabai from their mother, Mathurabai. The appellant claims to be the son of Dhondabai from her second marriage to one, Kundalik Mali. It was contended by the respondents in the suit filed by them, that the appellant is not the son of Dondabai as no marriage had ever taken place between her and Kundalik. Taking advantage of illiteracy of Dhondabai, Kundalik had got the properties standing in the name of Dhondabai transferred to the name of the appellant vide mutation entry no. 1318 dated 28th October, 1989 and Dhondabai, during her lifetime could take no objection to the mutation. According to the respondents, since the appellant is not the son of Dhondabai, he has no right to the property left by Dhondabai and the respondents being the daughters of Dhondabai have exclusive right thereto. Therefore, the respondents filed Regular Civil Suit No. 682 of 2006 for a declaration that, they are the owners of the suit property as described in the plaint and for perpetual injunction to restrain the appellant from interfering with their possession of the suit property.

3). The trial Court, by its judgment and decree held that, the respondents have failed to establish that the name of the appellant was illegally entered into the revenue records and that the suit property was the streedhan of Mathurabai which had devolved upon Dhondabai and her sister Latikabai. Though, there was a specific contention taken by the respondents in the plaint that, no marriage had taken place between

Dhondabai and Kundalik and the appellant is not the son of Dhondabai, the trial Court did not frame any issue on the contention, but proceeded to dismiss the suit.

4). The appeal court considered the alternate claim of the respondents of their one-third share each in the property of Dhondabai and decreed the suit in that regard. The lower Appellate Court, noted that it was not even the case of the appellant herein, that Dhondabai had, during her lifetime, transferred the suit property to him, by executing any document. It noted that, the entry in the revenue record, does not decide the title to the suit property. Therefore, the fact that the name of the appellant was entered into the revenue records in the year 1989 and it remained so until the death of Dhondabai in the year 2005, was of no consequence. On the death of Dhondabai, the respondents being her undisputed heirs, became entitled to a share in the property left by Dhondabai. As regards the contention of the respondents on the status of the appellant, the lower appellate Court, on the basis of the evidence led by the parties, rejected the same. It was the respondents own case that, the marriage between Dhondabai and their father, Naganath, was dissolved by divorce and thereafter there was Gandharva marriage between Dhondabai and Kundalik in the year 1980 and the appellant was born from that wedlock. The lower Appellate Court opined that, though the respondents have challenged the legitimacy of the appellant, the law always presumes in favour of marriage and legitimacy and whoever challenges the marriage and legitimacy has to prove the contrary. Since the evidence brought by the respondents before the Court was not strong, satisfactory and conclusive, the lower Appellate court decreed the suit in terms of the alternate prayer for possession of share of the respondents in the suit property. The decision of the lower appellate Court is seen to be supported by the material on record.

5). Mr. Khairdi, the learned Advocate for the appellant submits that, the uninterrupted entry in revenue records from the year 1989 coupled with actual use of the property, ought to have been correctly appreciated by the Courts below. He also submits that, the inaction on the part of Dhondabai about the mutation of the revenue records during her lifetime indicates surrender of the property by her. Mr. Khairdi, further argues that the appellate Court was in error in treating the suit property as, not Streedhan of Dhondabai, but as her independent property.

6). It is seen from the record that, the suit property was inherited by one, Mathurabai from her parents. She died on 5th April, 1975 leaving behind Dhondabai and Latika as her only heirs. After her demise, the property was mutated in the name of the heirs by mutation entry no. 456 of the year 1975. In the year 1989, Dhondabai and Latika got the property partitioned and recorded the partition by mutation entry no. 1318 dated 26th October, 1989. These facts clearly indicate that the suit property was not Streedhan of Dhondabai received from her husband as claimed by the appellant but was inherited by her from her mother. The Courts below have held that, the respondents have failed to establish that the appellant is not the legitimate son of Dhondabai. On appreciation of the oral, as well as, documentary evidence the trial Court held that there was customary divorce between Dhondabai and her first husband. Thereafter, she married the father of the appellant.

7). There can be no substance in the argument that, long standing continuous entry in the revenue records would indicate surrender of property by Dhondabai. The revenue records are not documents of title. Thus, there is no substantial question of law arising for consideration of the Court in the facts of the case. Hence, the Second Appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)