

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 21 OF 2014
WITH
CIVIL APPLICATION NO.72 OF 2014 IN SA/21/2014**

Smt.Keshribai Shankar Rathod ..Appellant

Vs

Sau.Shanta Parshuram Rathod .. Respondent

Mr. Nitin U. Jadhav, Advocate for Appellant.

Mr. Atul Damle, Senior Advocate, i/b Kishor H. Hase, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 28/04/2015

PC:

1. Heard Mr. Nitin Jadhav, learned counsel for the appellant and Mr. Atul Damle, learned senior counsel for the respondent.

2. By this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the original defendant has challenged the Judgment and decree dated 6.1.2011 passed by the learned 2nd Jt.Civil Judge, Jr. Dn., Kalyan in Special Civil Suit No.137 of 2008 as also the Judgment and decree dated 29.7.2013 passed by the learned Adhoc District Judge-1, Kalyan in Civil Appeal No.81 of 2011. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff, for (a) declaration of ownership, (b) possession, (c) damages.

3. In support of this Appeal, Mr. Jadhav strenuously contended that the plaintiff has not established her ownership rights over the suit property. He submitted that the plaintiff claims to have purchased the suit property from one Vithalsingh Jagansingh Thakur by a registered Sale Deed dated 1.11.2006. However, she did not produce any material on record to substantiate that Vithalsingh Jagansingh Thakur had any right, title and interest in the suit property. He submitted that on 6.3.1992, the said Vithalsingh Jagansingh Thakur executed tenancy agreement in favour of one Shankar Mahadu Gaikwad. ShankarMahadu Gaikwad had expired on 5.10.1981. In other words, he submitted that Vithalsingh Thakur was in the habit of executing fraudulent documents.

4. Mr. Jadhav submitted that the appellant-defendant has filed written statement and also set up counter claim for declaration that the sale deed in favour of the plaintiff is illegal, null and void. He submitted that basically the plaintiff did not establish her title over the suit property. He submitted that merely because the plaintiff had paid tax to Kalyan-Dombivali Municipal Corporation, that will not establish her ownership. In support of this submission, he relied upon the decision of the Apex Court in the case of R.V.E.Venkatachala Gounder Vs. A.V. & V.P.Temple, AIR 2003 Supreme Court 4548 and in particular paragraph 26 thereof. He submitted that the

defendant was, in fact, inducted as tenant by one Suresh Kondiram Gaikwad on 15.12.1996. After she was given plot admeasuring 10'x20' from Survey No.55, Hissa no.3/3 2/1 1/1 by said Suresh, she had made construction of room admeasuring 10'x20'. He, therefore, submitted that the plaintiff is no way concerned with the suit property.

5. On the other hand, Mr. Damle supported the impugned orders. He submitted that the Courts below, after appreciating the evidence on record, have concurrently held that the plaintiff has established title over the suit property; that the defendant has failed to establish that Suresh Gaikwad had any right, title and interest in respect of the suit property and consequently he was not competent to execute agreement of tenancy on 15.12.1996 in favour defendant. He, therefore, submitted that no case is made out under section 100 of C.P.C.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below, after considering the evidence on record, have concurrently held that the plaintiff has established her title. Not only that, the Courts below also considered that the plaintiff was paying tax and to that effect she had produced tax receipt at Exhibit-28. Mr. Jadhav submitted that entry in the municipal record is

not evidence of title. In my opinion, the plaintiff has instituted suit for declaration of title based on the sale deed dated 1.11.2006. The tax receipt at Exh.28 produced by the plaintiff is a piece of corroborative evidence in support of her case that she acquired ownership on the basis of the sale deed. As against this, the defendant did not produce any material on record to substantiate her plea that Suresh Gaikwad was the owner of the suit property and that he was competent /authorised to execute tenancy agreement dated 15.12.1996. The decision in the case of R.V.E.Venkatachala Gounder (supra), therefore, does not advance the case of the defendant.

7. In view thereof, I do not find that the Courts below committed any error in decreeing the suit. The defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to evidence on record. In view thereof, no question of law, much less any substantial substantial question of law, raises in this Appeal. Hence, Appeal fails and the same is dismissed. In view of disposal of the Appeal, Civil Application No.72 of 2014 for stay does not survive and the same is also disposed of.

(R.G.KETKAR, J.)