

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 113 OF 1992
WITH
CIVIL APPLICATION NO. 4389 OF 1996

1. Yeshwant s/o. Bhivaji Bhojane,
Age 35 years, Occu. Agri.,
2. Manik s/o. Yeshwant Bhojane,
Age 30 years, Occu. Agri.,
3. Babu s/o. Yeshwant Bhojane,
Age 25 years, Occu. Agri.,
4. Sakharam s/o. Yeshwant Bhojane,
Age 23 years, Occu. Agri.,
5. Salubai w/o. Manik Bhojane,
Age 25 years, Occu. Household,
6. Parwatibai Babu Bhojane,
Age 21 years, Occu. Household,

All R/o. Kingaon, Tal. Ambad,
District Jalna.

....Appellants.

Versus

1. Bajirao s/o. Bhivaji Bhojane,
Age 35 years, Occu. Agri.,
2. Gamaji Bhivaji Bhojane,
Age 30 years, Occu. Agri.,

Both R/o. Kingaon, Tal. Ambad,
District Jalna.

....Respondents.

Mr. S.S. Bora, Advocate for appellants.

Mr. V.B. Ghatge, Advocate for respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

JUDGMENT :

1) The appeal is filed against judgment and decree of Regular Civil Suit No. 190/1981, which was pending in the Court of Civil Judge, Junior Division, Ambad and also against the judgment and decree of Regular Civil Appeal No. 185/1986, which was pending in the District Court, Jalna. Heard both the sides.

2) The suit was filed for relief of permanent injunction and for declaration of ownership against the appellants. The suit property involved is Gat No. 231 (Old Survey No. 67/1), admeasuring 4 Acre 4 Gunta situated at village Kingaon. It is the case of plaintiffs that the property was owned by mother of plaintiffs by name Sonabai. Defendant No. 1 is real brother of the two plaintiffs.

3) It is the case of plaintiffs that there was partition amongst the brothers and the suit property had gone to the share of Sonabai. It is their case that under the registered sale deed dated 27.5.1981, she sold the property to plaintiffs, to her sons and so, they have become absolute owners of the property.

It is their case that the defendant had got entered his name in the record created during the implementation of consolidation scheme. It is contended that the said entry was challenged and the said entry made in favour of defendant No. 1 is cancelled as he has no right in respect of suit property. It is contended that in spite of these circumstances, on 30.9.1981 the defendants obstructed possession of plaintiffs over the suit land and the cause of action took place.

4) Defendants filed written statement and contested the matter. They contended that the property had come to Sonabai by succession, but she was not in possession. It is contended that there was no need to Sonabai to sell the property in favour of plaintiffs only and the transaction is not binding on the defendants. It is contended that Sonabai had given application to authority appointed for implementation of consolidation scheme to enter the name of defendant No. 1 in the revenue record as owner. It is contended that the land is received by defendant No. 1 in partition and so, plaintiffs have no concern with the land.

5) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence.

6) The Courts below have considered the oral and documentary evidence. Till the year 1962, there was the name of father of plaintiffs viz. Bhivaji. After the death of Bhivaji, name of Sonabai was entered as Karta of joint family as her sons were minor. Then record is there to show that partition was effected amongst the sons of Sonabai and each member was given separate property. The record of mutation is considered and it shows that it was almost equitable partition. The suit property was not given to the share of plaintiffs and defendants as per this record and the name of Sonabai was continued. This record shows that the land was kept with Sonabai and this was admeasuring 4 Acres 4 Gunta. Much more share was allotted to plaintiffs and defendant No. 1. Thus, there is no record with defendant No. 1 to show that the property had gone to his share in the partition. The record has created clear probability that property had gone to the share of Sonabai. As per the principles of Hindu Law, Sonabai was absolute owner of the property and her name was also there in the revenue record. In view of these circumstances, she could have transferred the property as provided under the Transfer of Property Act but not by giving application to the authority appointed under the Bombay Prevention of Fragmentation and Consolidation and Holdings Act.

Observations are made that the so called application given by Sonabai to the authority is suspicious in nature. In any case, by such application, the title could not have been transferred to defendant No. 1 and the concern authority has rightly cancelled the entry made in favour of defendant No. 1 in that regard. There is sale deed executed in favour of plaintiffs by their mother. Thus, the title passed to the plaintiffs. As per the record, Sonabai was in possession of the land after the death of Bhivaji and so, she could have handed over the possession to plaintiffs. These circumstances are considered by the Courts below.

7) This Court (Other Hon'ble Judge) admitted the appeal on 5.3.1992, but substantial questions of law were not formulated. In view of these circumstances, both the sides were asked to argue on following substantial questions of law :-

- (i) Whether Sonabai was the absolute owner of the suit property ?
- (ii) Whether under sale deed executed by Sonabai in favour of plaintiffs, title has passed to plaintiffs and they are in possession ? and
- (iii) Whether the Courts below have committed error in not considering the material on record created during consolidation of holdings ?

8) The aforesaid discussion shows that Courts below have considered the entire record. The title could not have passed to defendant No. 1, even if defendant No. 1 was in position to prove that his mother had given an application to the authority for entering the name of defendant No. 1. Thus, no substantial question of law as such is involved in the matter. All the points need to be answered against the appellants. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/