

Sequeira

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

***SECOND APPEAL NO. 61 OF 2015
Along with
CIVIL APPLICATION NO. 448 OF 2014***

Shri Sabaji Nivrutti Bhoir .. Appellant / Applicant
Vs.
Shri Bhagvant Nivrutti Bhor & ors. .. Respondents

Mr.Ajay Joshi, for the Appellant and Applicant.
Mr.T.D.Deshmukh, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Wednesday, 10 August 2016.***

Oral Order :

The learned counsel for the Appellant seeks leave to delete Respondent Nos.2 to 6 as according to the learned counsel for the Appellant for the purpose of present order presence of these Respondents is not necessary. At his request, Respondent Nos.2 to 6 stand deleted.

2. Admit on the following substantial question of law-

'Whether the learned District Judge committed an error of relying on a receipt in respect of Public Provident Fund without considering it's evidentiary value before passing the impugned judgment and decree?'

3. At the joint request of the counsel, taken up for final disposal forthwith. Filing of paper book dispensed with.

4. The suit bearing No.114 of 1999 was filed by the Respondent No.1 seeking partition and share in the suit property. The Appellant filed written statement and a counter claim. The learned Civil Judge by the judgment and order dated 25 March 2008 partly decreed the suit and the counter claim and directed that the Appellant and the Respondent No.1 have 6/15 share in the agricultural land and half share in the house property. The Appeal bearing No.339 of 2008 was filed by the Respondent No.1 in the District Court, Pune. The learned District Judge by the impugned judgment and order dated 31 August 2012 partly allowed the appeal and dismissed the counter claim and altered the shares. Against the dismissal of the counter claim and altered shares, the present Appeal is filed by the Appellant.

5. The main basis for passing the impugned order by the learned District Judge is a receipt in respect of Public Provident Fund issued by the Accounts office. In view of the grievance made by the learned counsel for the Appellant that the receipt was not proved in evidence and the receipt was manipulated, by order dated 5 May 1974, the record and proceedings were called. Record contains the disputed receipt. Prima facie perusal of this receipt indicates that there is a

handwritten paper slip pasted which contains the recitals. According to the learned counsel for the Appellant, the receipt is clearly manipulated. The learned counsel for the Respondent No.1 submits that merely because paper slip is pasted directly an inference cannot be drawn that it is manipulated and there could be an explanation why this has been done. The learned counsel for Respondent No.1 submits that in the circumstances, the appropriate course of action would be to remand the proceedings to the first appellate Court to consider the rival contentions as regards evidentiary value of the said receipt. The learned counsel for the Appellant is also not averse to this course of action. In view of this consensus between the parties, the question of law framed will have to be answered accordingly. The learned District Judge, will have to examine the evidentiary value of the Receipts before proceeding to rely upon the same.

6. In the circumstances, the impugned judgment and order dated 31 August 2012 in Appeal No. 339 of 2008 passed by the learned District Judge will have to be quashed and set aside and it is accordingly quashed and set aside.

7. The Appeal No.339 of 2008 stands restored to the file of District Judge, Pune to be disposed of on its own merits.

8. It is clarified that the observations made in this order are purely prima facie and the evidentiary value of the receipt will be considered by the learned District Judge on its own merits. The parties will appear before the learned District Judge, Pune, on 6 September 2016. Registry will return the record to the learned District Judge, forthwith and will ensure that the record reaches the District Court, Pune before 7 September 2016.

9. Civil Application also stands disposed of accordingly.

(N.M.Jamdar, J.)