

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.515 OF 2016

ALONG WITH

CIVIL APPLICATION NO.1045 OF 2016

Pandurang Umaji Dabholkar.] ... Appellant

Versus

1. Vandana Prabhakar Suvare,]
2. Shri Kashiram Umaji Dabholkar.] ... Respondents

Mr. Sanskar Marathe for Appellant.
None for Respondents.

CORAM :- R. D. DHANUKA, J.
DATE :- NOVEMBER 28, 2016

P. C. :-

1. By this appeal under Section 100 of the Code of Civil Procedure, 1908, ('CPC') the appellant (original defendant no.1) has impugned the Judgment and Decree dated 03/12/2015 passed by the District Judge-2, Ratnagiri, in Civil Appeal No.4 of 2013 filed by the appellant. By the said appeal (Civil Appeal No.4 of 2013), the appellant had impugned the Judgment and Decree dated 29/11/2012 passed by the Civil Judge Junior Division, Lanja, thereby decreeing the suit filed by the respondents, *inter alia*, for declaration, possession and

mandatory injunction along with damages. All the relevant facts for the purpose of deciding this Second Appeal are as under :-

2. It was the case of the respondent no.1 (original plaintiff) that the land bearing Gat No.500, admeasuring 27 R, priorly numbered as S.No.101, H.No.20B and S.No.101, H.No.28A was owned and possessed by her. The certificate under Section 24 (1) of Bombay Prevention of Fragmentation and Consolidation of Land Holding Act was granted by the consolidation authority in favour of the father of the plaintiff on 26/08/1963. The said document was registered in the Sub-Registrar's office, Rajapur. It was the case of the plaintiff that upon demise of her father in the year 1994, the plaintiff being the sole legal heir of her father, became owner of the said property. It was also the case of the plaintiff that she had cultivated rice and has planted 4 coconut trees, 2 jackfruit trees, 1 alphonso mango tree and other trees on the suit land and was taking fruits from those trees. It was the case of the plaintiff that the defendants tried to oust the plaintiff from the suit property in the month of November 2008. The plaintiff accordingly filed a suit for declaration, possession and mandatory injunction along with damages. The defendant nos.1 and 2 resisted the suit by filing written statement and contended that the plaintiff and the defendants were from the same family and the suit property was the ancestral joint family property. It was also alleged by the defendants that there was no partition amongst them. The defendants denied that there was any cause of action for filing the suit.

3. The learned Trial Judge framed 7 issues. The plaintiff examined herself as a witness. The defendants examined defendant no.1 and other 3 witnesses. The learned Trial Judge, after considering the documents and other evidence, held that the plaintiff has proved her exclusive ownership and possession of the suit property and has further proved that the defendants had encroached upon the suit property by building new house and staying therein. The Trial Court held that the plaintiff was entitled for possession as prayed. It is also held that the defendant nos.1 and 2 had failed to prove that the suit property was their joint family ancestral property. The Trial Court accordingly passed a decree declaring ownership of the plaintiff in respect of the suit property and directed the defendant nos.1 and 2 to restore vacant and peaceful possession of the encroached portion of the suit property and ordered an inquiry for mesne profit under Order 20 Rule 12 (c) of the CPC.

4. Being aggrieved by the said Judgment and Decree dated 29/11/2012, the defendant nos.1 and 2 preferred an appeal (Civil Appeal No.4 of 2013) in the Court of learned District Judge-2, Ratnagiri. The learned District Judge framed 3 points for determination and after considering the oral and documentary evidence, held that the defendant nos.1 and 2 had failed to prove that the suit property was their joint family ancestral property and had also failed to prove that they had not carried out the construction by encroaching upon the suit property exclusively owned by the plaintiff. The learned District Judge accordingly dismissed the said Civil Appeal

No.4 of 2014 by passing the Judgment and Decree on 03/12/2015. This Judgment of the First Appellate Court is impugned by the defendant no.1 in this Second Appeal.

5. The learned Counsel for appellant (original defendant no.1) submits that the plaintiff had not produced any document to show that she was the owner of the suit property. He submits that the suit property was joint property of the plaintiff and the defendant nos.1 and 2. He submits that merely on the basis of revenue entry produced by the plaintiff, both the Courts below have rendered a finding of ownership in favour of the original plaintiff. He submits that though the marriage invitation card was produced by the appellant in which the name of the appellant was shown as relative of the original plaintiff as maternal uncle, the First Appellate Court has discarded the said document and rejected the contention of the appellant that the family of the plaintiff and the appellant was joint and the appellant was also entitled to share in the suit property.

6. A perusal of the Judgment and Decree passed by the learned Trial Judge indicates that the defendant no.1 did not produce any documentary evidence before the learned Trial Judge to prove his claim of existence of a joint family between the plaintiff and the defendant no.1. He also failed to produce any proof to show joint ownership in respect of the suit property. As against that, the plaintiff had entered the witness box and produced various documents including extract of Hissa Form No.4 Kokan in which the name of the

father of the plaintiff was shown as owner and possessor of the land. The extract of consolidation authority was also produced. The plaintiff has also examined Mr. Sunil Tukaram Sangare who had carried out measurement of the suit property and prepared map.

7. Since it was the case of the defendant no.1 that there existed a joint family of the plaintiff and the defendant no.1 and he was in joint ownership of the suit property, the onus was on the defendant no.1 to prove such claim. The Trial Judge as well as the First Appellate Court, in my opinion, with such evidence on record, have rightly rendered a finding of fact that the defendant no.1 had failed to prove that the suit property was the joint family ancestral property of the plaintiff and the defendant nos.1 and 2.

8. Insofar as the submission of the learned Counsel for defendant no.1 that the suit is decreed by the learned Trial Judge as well as the First Appellate Court merely on the basis of revenue entry, in my view, there is no substance in the submission of the learned Counsel for defendant no.1. Perusal of the record indicates that the original plaintiff had produced the said documents indicating the ownership of the father of the plaintiff in respect of the suit property. Upon demise of the father of the plaintiff, the plaintiff being the sole heir, became owner of the suit property. Insofar as the submission of the learned Counsel for defendant no.1 that the First Appellate Court had ignored the marriage invitation card which included the name of the defendant no.1 as maternal uncle which was indicating that the

defendant no.1 was a member of the joint family of the plaintiff is concerned, in my view, even if the name of the defendant no.1 was printed on the marriage invitation card, that itself would not be conclusive to prove that there existed a joint family. There is, thus, no substance in the submission of the learned Counsel for the defendant no.1

9. In my view, both Courts have considered the documentary and oral evidence led by both the parties. The findings of the two Courts below being concurrent and being not perverse, cannot be interfered with by this Court. Second Appeal being devoid of merits, is dismissed accordingly.

10. In view of dismissal of the Second Appeal, the Civil Application does not survive and is accordingly dismissed. No order as to costs.

(R. D. DHANUKA, J.)