

JPP

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

SECOND APPEAL NO. 590 OF 1993

Pralhad Vishnupant Karanjkar
(since deceased) through Legal Heirs
Mr. Raman Pralhad Karanjkar
R/o. At : C.T.S. No. 2904, Old
Chatti Lane, Barshi, Dist. - Solapur.

... Appellant.

V/s.

1. Mrs. Prabhavati Jagannath Rangdal
2. Mr. Jagannath Bhagwan Rangdal
Both since deceased, through their
Legal Representative :
Mr. Rajendra Bhagwan Rangdal
R/o. 2719/1, Navi Chate Galli,
Barshi, District – Solapur.

... Respondent.

Mr. S.D. Thokade a/w. V.D. Raut for the Appellants.
Ms. Gauri Godse for the Respondents.

CORAM : N.M. Jamdar, J.

16 June, 2016.

Oral Judgment :-

The Appellant has challenged the judgment and order passed by the District Judge, Solapur dated 13 August 1993. The learned District Judge allowed the Appeal setting aside the judgment and decree

passed by the learned Civil Judge, Junior Division, Barshi. The learned Civil Judge had dismissed the Suit filed by the Respondents – Plaintiff. The learned District Judge set aside the judgment and decree of the learned Civil Judge and directed the Appellant to deliver vacant possession of the Suit property.

2. The suit property is described by the Respondents in the plaint as City Survey No. 2904/6 more particularly, two rooms above the latrine situated in City Survey No. 2904/6. One Bhagwan Rangdal was the owner of the CTS No. 2904. He had three sons Jagannath i.e. the Respondent, Satish and Suresh. CTS No. 2904 was the ancestral property. In the year 1969, partition took place in respect of CTS No. 2904 and the property was divided. CTS No. 2904/3 being a courtyard was kept joint amongst Bhagwan and his three sons. One part was allotted to the Respondent. One part was allotted to Suresh. One was allotted to Bhagwan, and one was allotted to Satish. These were 2904/1, 2904/2, 2904/4 and 2904/5 respectively. CTS No. 2904/6, which contained latrine, was kept joint. In the plaint the Respondents contended that the CTS No. 2904/5 belonged to him and his brother. His brother Suresh sold his undivided $1/4^{\text{th}}$ share in CTS No. 2904/6 by a sale deed dated 11 January 1982. On 1 April 1971 Bhagwan died after leaving $1/4^{\text{th}}$ joint share in his favour in CTS No. 2904/6. It was further contended by the Respondents that he inherited $1/4^{\text{th}}$ share in the

name of father. It was the case of the Respondents that the Appellant had no right, title or interest in CTS No. 2904/6 and while taking possession of a tenant inducted by the Appellant, the Appellant wrongfully took possession of the suit property. According to the Respondents that the decree pursuant to which the Appellant took possession was not binding on the Respondents. The main contention of the Appellant throughout these proceedings has been that there is no such independent CTS No. 2904/6 but it is the only matter of convenience that the number is given, and it is part of CTS No. 2904/5. It was the case of the Appellant that the rooms above the latrine were purchased by the Appellant by virtue of a sale deed from Satish. It was also contended by the Appellant that the sale deeds executed by Suresh in favour of the Respondents were bogus, no title passed to the Respondents through those sale deeds and the decree obtained by the Appellant against the tenant was lawful and the possession was rightly taken.

3. The learned Civil Judge concluded that the Respondents did not prove their title to the Suit property nor they were dispossessed by the Appellant and the sale deed dated 11 January 1982 was not binding on the Appellant. Accordingly, the Civil Judge by judgment and order dated 18 October 1989 dismissed the Suit. The Respondents filed a regular civil appeal No. 413 of 1990 in the District Court, Solapur. The learned District Judge held that the Respondents proved their title to CTS No. 2904/5 and the

Appellant failed to prove his title to CTS No. 2904/6. The learned District Judge also came to the conclusion that the Appellant is not entitled to retain the possession of the part obtained by him in execution in decree obtained against the tenant. Accordingly, the learned District Judge allowed the Appeal and directed the Appellant to hand over possession of the suit property.

4. The Appeal was admitted on 24 January 1994 on the following substantial questions of law : Whether the First Appellate Court erred in not considering the fact concerning the decree passed in Regular Civil Suit No. 54 of 1976 and the possession obtained by the appellant from the tenant Balasaheb Rangdal in execution of the said decree vide Regular Darkhast No. 172 of 1981 and the legal effect thereof on the suit claim; Whether the appellant is in lawful possession of the suit land in view of such possession having been awarded to the appellant in execution of the decree referred to hereinabove; Whether the appellant has lawful title in respect of the suit premises by virtue of the provisions contained by virtue of the provisions contained in sale deed dated 14.11.1969 executed by one Satish Rangdal and other relevant documents; Whether the First Appellate Court erred in passing the decree for possession in respect of the suit property on the assumption that the appellant had obtained possession of the suit premises “under pretext of a decree of a Court” as observed in para.

25 of its judgment; and Whether the aforesaid observations are justified in law ?

5. Mr. Thokade, learned Counsel for the Appellant in short submitted : The possession of the Suit property was obtained by the Appellant by instituting Darkhast proceedings in the Suit filed against the tenant. The Appellant had appeared in the execution proceedings and resisted the Darkhast but their objection was not accepted. Having obtained the possession of the Suit property through Darkhast proceedings in which the objections of the Appellant were dismissed, the First Appellate Court could not have directed the Appellant to hand over the possession of the property. Though the latrine had been kept common for joint use, it was not the position in respect of the two rooms above the latrine, which were sold to the Appellant by sale deeds. The suit property was purchased through a sale deed dated 24 October 1969 executed by Bhagwan, secondly, through sale deed dated 14 November 1969 from Satish and thirdly from Suresh on 17 April 1971. These three sold their shares to the Appellant and therefore, the Appellant had right, title and interest in the suit property. Having sold the Suit property to the Appellant, there was no question of any sale deeds in favour of the Respondents. CTS No. 2904/6 was part and parcel of CTS No. 2904/5 and the possession of the two rooms above the latrine was with the Appellants which the Appellant had let out to

one tenant which was subsequently recovered by instituting a suit against the tenant. The Suit for injunction was also filed by the Respondents against the Appellant, which was subsequently not pursued. The Appellant had acquired rights in the suit property by way of sale deeds executed by brothers of the Respondent and that the possession of the suit property was obtained through Darkhast proceedings.

6. Ms. Godse, the learned Counsel for the Respondents on the other hand submitted : The contention that CTS No. 2904/6 was only given for convenience is not correct and has rightly been disbelieved by the learned First Appellate Court. Bhagwan and three sons had undivided share in CTS No. 2904/6. By a sale deed dated 14 November 1969, Satish sold his independent share in CTS No. 2904/5 and by a sale deed dated 17 April 1971 Suresh sold his independent share in CTS No. 2904/2 and in respect of latrine in CTS No. 2904/6 to the Appellant. Satish and Suresh only sold their independent shares and not undivided share to the Appellant. It was contended that the First Appellate Court was right in holding that the suit property sold by Satish is not the same as the suit property and not part of the CTS No. 2904/5. Even though the Appellant took possession of same property from the tenant inducted by him, no right is vested in the Appellant and the present Suit is filed on title and the same cannot be defeated purely on the ground of

possession is obtained by the Appellant. Once it is hold that CTS No. 2904/6 is not part of CTS No.2904/5, which is a finding of fact, no title deed is produced on record by the Appellant to show any right in respect of CTS No. 2904/6. Only on the basis of taking possession from a tenant, a right is being asserted by the Appellant.

7. I have considered the rival contentions. The question of law framed in this Appeal is regarding the decree passed in Regular Civil Suit No. 54 of 1976 and the possession obtained by the Appellant pursuant to it. Another question of law is whether the Appellant has acquired a lawful title by the virtue of sale deed dated 14 November 1969. Before considering the question of law as framed, the issues framed by the learned District Judge will have to be noticed. The issues were whether the Respondents prove their title to CTS No. 2904/5; whether the Appellant proved that he acquired title to CTS No.2904/6; whether the Appellant proved that he was entitled to the Suit property having obtained possession through executing the decree.

8. Bhagwan Rangdal was the owner of CTS No. 2904. He had three sons Jagannath, Satish and Suresh. Jagannath is the Respondent No.2 in this Appeal represented through his heirs. CTS No. 2904 was the joint family property of Bhagwan and his three sons. Partition took place in respect of CTS No. 2904 and it was

divided by metes and bounds. CTS No. 2904/3 was a court-yard which was kept joint. Strip No. 2 was allotted to Suresh, Strip No.1 was allotted to Jagannath, Strip No.4 was allotted to Bhagwan and Strip No.5 was allotted to Satish. Accordingly, the property was divided in CTS No.2904/1, CTS No. 2904/2, etc. There was one more strip i.e. CTS No. 2904/6. According to the Respondents, this was not allotted to anybody but was kept joint as it consisting of latrine. All sons were having one fourth share each in common like CTS No. 2904/3, the court-yard.

9. It is the case of the Appellant that CTS No. 2904/6 was part of CTS No. 2904/5 but it was referred to CTS No. 2904/6 only for convenience. On the face of it this property carries a different survey number. Nothing has been produced by the Appellant to show that CTS No. 2904/6 was given separate number for sake of convenience. The Appellant is not part of the joint family property and therefore, he has no personal knowledge as regard the position of CTS No. 2904/5 and CTS No. 2904/6. No documentary evidence has been produced by the Appellant to demonstrate that CTS No. 2904/6, which has been given different CTS number, was part and parcel of CTS No. 2904/5. The Appellant has admitted that these two properties carry different CTS numbers but has stated they were given separate numbers for convenience. Since the Appellant was asserting a factual possession contrary to the property records, heavy burden was upon the Appellant to demonstrate this position.

10. In the pleadings it was asserted that this number was given by way of convenience. As the learned District Judge has rightly observed, the Appellant could not spell out for whose convenience the separate number was given and for what reason a separate number was given. In the cross-examination of the Respondents, the line of questioning adopted indicated that the defence was that the separate number was given due to mistake of the Municipal Council. The learned District Judge, therefore, rightly concluded that the Appellant failed to show that CTS No. 2904/6 was a part of CTS No. 2904/5. The oral evidence led by the parties was examined by the learned District Judge. If the evidence is perused, the Respondents have asserted that CTS No. 2904/6, though was given separate number, was kept in joint in use. As regard CTS No. 2904/3 is concerned, being a court-yard, it was kept in common. Therefore, the version of the Respondents that it was separate but kept in joint use is more probable and in tune with property records. Therefore, even though a separate number was given to CTS No. 2904/6 being a latrine it was kept in common and the version of Respondents that CTS No. 2904/6 was not allotted to any individual but kept common has been rightly held to be more trust-worthy by the learned District Judge. The finding of fact therefore that CTS No. 2904/6 was not part of CTS No. 2904/5 cannot be interfered with.

11. The second question that arises is the title CTS No. 2904/6. Bhagwan expired on 15 October 1971. CTS No.2904/6 was kept common. It has come on record that by a sale deed dated 11 January 1982, Suresh transferred his share in CTS No. 2904/6 to Respondent No.1 – Plaintiff No.1. As rightly contended by Ms. Godse, Satish and Suresh only sold their independent share to the Appellant and their undivided share was not sold to the Appellant. The sale deed dated 14 November 1969, effect of which is one of the question of law, is produced at Exhibit 73. By this sale deed, Satish sold his independent share which included undivided share in CTS No. 2904/5. The sale deed dated 17 April 1971, is regarding the independent share in CTS No. 2904/2 and right to use latrine in CTS No. 2904/6. The learned District Judge came to the conclusion that Suresh never sold undivided share in CTS No. 2904/6 to the Appellant. All that was sold pursuant to the sale deed was that the Appellant given common and joint right pertaining to latrine in CTS No. 2904/6. Once it is held that CTS No. 2904/6 was not allotted to any individual but it was kept in common, there was no question of sale of CTS No. 2904/6 in favour of the Appellant by one of the co-sharers.

12. As regard CTS No. 2904/5 and CTS No. 2904/2 are concerned, the Appellant has purchased the same from Satish and Suresh through registered sale deed dated 14 November 1969 and

17 April 1971. The question however is regarding CTS No. 2904/6. Satish had no exclusive title to CTS No. 2904/6 and the latrine on the structure. Once the theory of the Appellant that CTS No. 2904/5 includes CTS No. 2904/6 is rejected and it is held that CTS No. 2904/6 was kept in common, then merely by entering into a sale deed by one of the sharers, no right to entire CTS No. 2904/6 was acquired by the Appellant. At the most, it could be said that the Appellant acquired right to use CTS No. 2904/6 to the extent of the share of Suresh. The question of law raised on the sale deed of 14 November 1969 as to whether this deed conferred exclusive right on the Appellant in respect of CTS No. 2904/6 will have to be answered against the Appellant.

13. The next question of law is regarding the execution of the decree in Regular Civil Suit No. 439 of 1974. This Suit was instituted by the Appellant to recover possession from one of the tenants. It was contended by Mr. Thokade that since the Appellant had obtained possession of the suit premises by executing a decree through process of Court, to which the Respondents had objected and the objection was over-ruled, the Appellant had become owner of the suit premises. On the other hand, it was contended by Ms. Godse that the tenancy created by the Appellant in respect of his own property cannot be extended to the property belonging to the Respondents and even though possession was taken, it was while

executing the decree in respect of CTS No. 2904/5 and the Appellant has sought to extend the decree to take possession of CTS No. 2904/6.

14. For consideration of this question of law, one will have to proceed on the factual position that CTS No. 2904/6 is not part of CTS No. 2904/5. The learned District Judge has observed that the possession receipt which was executed during the Darkhast No. 172 of 1981 in Regular Civil Suit No.54 of 1976 related to CTS No. 2904/5. The Appellant was therefore entitled to recover only possession of CTS No. 2904/5. The learned District Judge has examined the proceedings in the Civil Suit No. 54 of 1976 and the Darkhast proceedings carefully. The learned Trial Court relied on the map prepared by the Court Commissioner in Regular Civil Suit No. 439 of 1974. It is observed by the learned District Judge that the Commissioner was not examined. There were no particulars in what manner the Commissioner was appointed. The learned District Judge thereafter considered the certified copy of the CTS relied upon by the Trial Court. It was noticed that the map in respect of boundaries in the CTS No. 2904/6 was not correct. The learned District Judge, as a final court for adjudicating factual aspects, was within its right to analyze the position of maps specifying the boundaries, evaluate the veracity of the said measurement and arrive at a factual finding. The argument of Mr.

Thokade that moment the possession is taken through court process, a right is created in favour of the Appellant, cannot be accepted in this case. The Appellant had instituted the Suit for possession from the tenant. The possession receipts in execution of the decree categorically related to CTS No.2904/5. CTS No. 2904/6 is different than CTS No. 2904/5 and merely by the Appellant being in possession of an area wrongly delivered under the decree of the Court, the right of the ownership right of the Respondents is not lost. Therefore, a suit on title to recover that portion of the land which was taken pursuant to the decree in respect of some other portion, could not have been defeated on this ground.

15. As regard the argument which was sought to be advanced by the Appellant that when the Respondents have stated that they had transferred the property in respect of CTS No. 2904/1 to one Jamunabai, whether the Plaintiffs can claim possession of the suit property is concerned, there is no such issue framed neither in the Trial Court nor in the Appellate Court. The Trial Court had not dismissed the Suit filed by the Respondents by framing an issue to that effect with discussion on the same. If it was one of the ground of dismissal, the Respondents would have agitated the same in the First Appeal. As regard the withdrawal of the earlier suit and dismissal of objections to the Darkhast proceedings are concerned, it will not bar the institution of the present Suit which is filed on title.

16. Therefore, to conclude, the Suit is based on title. The Appellant had no title in respect of the Suit property. Main arguments advanced, are that CTS No. 2904/6 is the part and parcel of CTS No. 2904/5 and the sale deeds in favour of the Appellant. As already held that both these points are not in favour of the Appellant. In view of the above discussion, the question of law as framed will have to be answered against the Appellant.

17. The Second Appeal dismissed. No costs.

18. The interim order operating in this Appeal is continued for period of sixteen weeks. This extension of interim relief is on a condition that the Appellant will not create any third party rights in the Suit property.

(N.M. Jamdar, J.)