

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 955 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 2050 OF 2015****IN****SECOND APPEAL NO. 955 OF 2015****Manikrao Dattu Bhosale & Anr.****..... Appellants****VERSUS****Pratap Pandurang Bhosale
(Deceased) & Ors.****..... Respondents**

Mr. Shailesh Chavan, i/b. Mr. Milind Deshmukh for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 1st SEPTEMBER, 2016****P.C.**

By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment dated 16th June, 2015 passed by the learned Ad-hoc District Judge-3, Kolhapur dismissing the appeal filed by the appellants against the judgment and decree dated 9th January, 2012 thereby passing a decree in favour of the respondents herein (original plaintiffs) in the suit which was for a declaration that the plaintiffs were the sole owners of the suit properties. Insofar as the prayer of the plaintiffs for a declaration that the entries of the names of the appellants in the revenue records in respect of the suit properties are illegal and without jurisdiction is concerned, the said relief is rejected by the learned trial judge as the same was beyond the limitation of the civil court.

2. It was the case of the plaintiffs that the suit properties were Inam lands and came in possession of the plaintiffs from their predecessor. The lands were in the name of Pandurang Bhosale who had paid the amount of the re-grant and his name had been mutated in the revenue records. He had filed a suit for partition bearing RCS No.59 of 1993 and a suit for injunction bearing No.71 of 1996. The suit for partition was withdrawn and suit for injunction was dismissed. The defendants further got their names recorded in the revenue record. The plaintiffs accordingly filed a suit for declaration that the plaintiffs were the sole owners of the suit property, for a declaration that the plaintiffs were the sole owners of the suit properties, for a declaration that the entries of the names of the defendants in the revenue record of the suit properties were illegal and without jurisdiction and for injunction restraining the defendants from interfering with the possession of the plaintiffs over the suit properties.

3. The suit was resisted by the defendants by filing the written statement. The learned trial judge framed seven issues. The plaintiffs examined the plaintiff no.3 as a witness to produce various documents. Defendants examined defendant no.2 as their witness who also produced several documents.

4. The learned trial judge passed a judgment and decree on 9th January, 2012 and decreed the said suit. Insofar as declaration sought by the plaintiffs that the entries made in the revenue record were illegal and without jurisdiction is concerned, the said relief was rejected. The defendants filed an appeal against the said judgment and decree before the learned Ad-hoc District Judge -3 (RCA No.43 of 2012).

5. The appellate court framed seven points for determination. After

considering the oral and documentary evidence and several judgments relied upon by both the parties dismissed the said appeal filed by the order and judgment dated 16th June, 2015.

6. Learned counsel for the original defendants submits that though the compromise pursis was admitted by the plaintiffs, the learned trial judge did not take cognizance of the said compromise pursis. He submits that the learned trial judge did not consider several arguments advanced by the defendants and have rendered erroneous judgment and decree. He submits that the findings of the learned trial judge and of the appellate court are also perverse.

7. With the assistance of the learned counsel for the defendants, I have perused the judgment and decree passed by the learned trial judge and also the order and judgment passed by the appellate court. The learned trial judge has rendered a finding that the plaintiffs were exclusive owners and were in possession of the suit property and the defendants had obstructed their possession over the said property. The plaintiffs had proved their title and were entitled to get protection against the defendants. The lower appellate court framed seven issues and rendered findings on each of the issue in favour of the plaintiffs. The appellate court also held that the plaintiffs were entitled for cancellation of the entries of the name of the defendants in the revenue record of the suit properties.

8. The appellate court held that the defendants had failed to produce any documentary evidence to show that the predecessor of the defendants i.e. Dattu was the son of Tukaram Bapu Bhosale. The appellate court in my view has rightly held that the Tahsildar or the learned Minister could not have adjudicated upon the title of the parties in the suit property as the same was beyond their jurisdiction.

After considering the documentary evidence and oral evidence led by both the parties, both the courts have rendered various findings of fact which are not perverse and thus cannot be interfered with by this court under section 100 of the Code of Civil Procedure.

9. I am not inclined to accept the submission of the learned counsel for the defendants that the documents relied upon by the defendants had not been considered by the trial court. Both the courts below have rendered detailed reasons in the impugned judgment and decree. The appeal is devoid of merits and is accordingly dismissed. No orders as to costs.

10. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]