

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 641 OF 2014

Chandulal Mahammad Khot

..... Appellant

VERSUS

Yashwant Bandu Pawar & Anr.

..... Respondents

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

CORAM : R.D. DHANUKA, J.

DATE : 29th AUGUST, 2016

P.C.

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the order and judgment dated 25th June, 2014 passed by the learned District Judge, - 2 dismissing the appeal. The appellant has impugned the judgment and decree dated 12th December, 2008 passed by the learned trial judge dismissing the suit for partition and separate possession of his 1/3rd share in future mense profit.

2. It was the case of the appellant (original plaintiff) that Pira Babaji Khot died leaving behind him two sons viz. Mohammad, Nabibhai and widow of predeceased son Babu alias Babaji, namely Tolubai. On the death of Pira Babaji Khot, mutation came to be effected recording names of two sons and Tolubai. It was the case of the plaintiff that he had maintained Tolubai till the date of her death and had gifted the suit land i.e. her 1/3rd share in land Gat No.289 by oral gift (Hiba) to the plaintiff and put him in actual possession. In the year 1981, the said Tolubai died and since then the plaintiff was allegedly cultivating and enjoying the suit land.

3. It was the case of the plaintiff that since the defendant was threatening to dispossess him from the suit land, he filed a suit for partition and possession of his 1/3rd share in the year 2004. The learned trial judge dismissed the said suit on 12th December, 2008. The appeal filed by the plaintiff came to be dismissed by the learned trial judge on 25th June, 2014.

4. Learned counsel appearing for the plaintiff submits that Tolubai had already given her 1/3rd share in the suit property to the appellant by oral gift which was proved by the plaintiff before the learned trial judge. He submits that his client was in possession of the said land and thus the learned trial judge ought to have passed the decree in favour of the plaintiff.

5. Learned trial judge has considered the oral and documentary evidence and has answered the 12 issues framed by him against the plaintiff. The appellate court also framed eight issues and has rendered a finding of fact that Tolubai did not have 1/3rd share in the suit land. The finding is also rendered to the fact that the said Tolubai did not gift her 1/3rd share by oral gift or otherwise and had not put the plaintiff in possession of the suit property. The plaintiff had failed to prove his possession to the suit land. There was no obstruction created by the defendants with the alleged possession of the plaintiff. The finding is also rendered that the suit was not within the period of limitation.

6. I have perused the order and decree passed by the learned trial judge and the order and judgment of the appellate court. Both the courts below have considered the evidence of both the parties and also the documentary evidence and the findings of effect, the findings of fact are not perverse and thus cannot be interfered with by this court under section 100 of the Code of Civil Procedure,

1908. The learned counsel for the plaintiff could not demonstrate as to how the findings rendered by the two courts are perverse. The findings are concurrent findings and do not warrant any interference by this court. There is no substantial question of law arises in this appeal. Appeal is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]