

Sequeira

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

*SECOND APPEAL NO. 744 OF 2015
Along with
CIVIL APPLICATION NO. 1836 OF 2015
AND
CIVIL APPLICATION NO. 1427 OF 2015*

Shri Vishwanath Trimbak Gosavi & anr. ... Appellants

V/s.

Shri Ganesh Ramnath Gosavi & ors. ... Respondents.

Mr.P.N.Joshi a/w Mr.Pratik Rahade, for Appellants and Applicants in both Civil Applications.

Mr.Sandip Shinde, for Respondent Nos.1 to 3.

*Coram : N.M. Jamdar, J.
Wednesday 15 June, 2016.*

P.C. :-

The Appellants challenge Judgment and Decree passed by the learned District Judge, Niphad dated 13 October 2014 allowing the Appeal and setting aside the Judgment and Decree dated 27 June 2005 passed by the Civil Judge, Junior Division Yeola, whereby the Suit filed by the Respondent No.1 was dismissed.

2. The Respondent No.1 filed a Suit in respect of two properties, Gat No.36 and 118, at village Thangaon, taluka Yeola, district Nashik. It was the case of the Respondent No.1 that properties are ancestral properties

and when he was a minor the Appellants had played a fraud on his mother, got the properties transferred to their names. Accordingly the Respondent No.1 sought partition of the properties. The learned Civil Judge came to the conclusion that the properties were not ancestral properties and dismissed the Suit. The learned Judge also held that the relinquishment deed was not obtained by fraud and that the Respondent No.1 did not include all joint family properties. The learned District Judge held that as far as Gat no.36 is concerned, the suit land was mortgaged and that unless the mortgage is redeemed, the Appellants cannot claim any share in the property. As regards Gat No.118, the learned Judge held that the property was ancestral property and the so-called relinquishment deed conferred no title on the Appellants. Accordingly the learned District Judge allowed the Appeal and decreed the Suit and granted 1/4th share to the Respondent Nos.1 and 2 in Gat No.118 and also Defendant Nos.3 to 5.

3. The learned counsel for the Appellants submitted that the decision of the learned Civil Judge that the properties are not ancestral is correct. He submitted that even assuming that the property is ancestral, at the most Respondent No.1 – Plaintiff will get 1/4th share and the other Respondents -Defendants who had not filed Written statement cannot go beyond the relinquishment deed and therefore, they could not have been granted any share in the property. He submitted that the Suit ought to have been dismissed for non-joinder as there are various claims in the said property. If the Judgment of the learned Civil Judge is perused is bereft of any description. As regards the property being ancestral property

the entire issue is disposed of in one sentence that it is neither ancestral nor joint family property.

4. As regards the non-joinder the discussion by learned Civil Judge is not clear. At one place, it is mentioned as to joint family properties and at one place it is non inclusions of the other parties. There is no discussion at all as regards joining of the parties. It is the contention of the learned counsel for the Appellants that one of the witness who was examined by the Respondent No.1-Plaintiff also claimed share in the property. If that was the position it was open to the said witness to join himself in the Suit which he has consciously chosen not to do. Further the stand of the Appellants themselves will have to be considered. The Appellants had taken a stand that the property is not ancestral property which has been falsified. After this stand is found to be falsified various technical objections are being raised to stop the partition of the property. The learned District Judge after considering the evidence on record and considering that the property was in the name of father of Respondent No.1 and other piece of evidence, came to the conclusion that the property was ancestral property. As regards of right put forth by the Appellants, reliance is placed by the Appellants on relinquishment deed and entries in the revenue record. The mode of transfer of immovable property is specified simply as relinquishment deed which is unregistered, as rightly been held by the learned District Judge as conferring no title on the Appellants. Though it is proved that the other Defendants did not take steps to set aside the relinquishment deed in view of the findings reached for adjudicating dispute between the Appellants and Respondent

No.1-Plaintiff that the relinquishment deed was not valid, it is not necessary to direct them to file another suit as contended by the learned counsel for the Appellants. This will only lead to multiplicity of proceedings when the findings that the relinquishment deed conferred no title has already been reached.

5. As regards the non-joinder of parties is concerned, as stated earlier the learned Civil Judge has not considered this issue at all. The Respondent No.1 had joined his family members to the Suit and has sought partition thereof. Before the district Court an Appeal was filed by the other Defendants and therefore, no error was committed by the learned District Judge in granting them share in the suit property once relinquishment deed was held to be non-conferring any title on the Appellants. In the circumstances, no perversity can be found in the decision of the learned District Judge. The points raised do not involve any substantial question of law. The Appeal is accordingly dismissed.

6. Both the Civil Applications stand disposed of.

(N.M. Jamdar, J.)