

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.375 of 2014
(Ramavtar s/o Ravidutta Sharma and another v. Vijaykumar Sampatrao
Kuthe)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri P.M. Mehta, Advocate for Appellant No.1.
Shri R.A. Mirza, Advocate for LR's No.1 and 3 of Appellant
No.2.
Shri R.L. Khapre, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Dated : 5th July, 2016

Second Appeal No.375 of 2014 :

The Trial Court passed a decree in Regular Civil Suit No.538 of 1987 on 28-3-2002. The plaintiff is declared to be the owner of the suit property and the defendants are directed to hand over the possession of the suit block to the plaintiff. The Trial Court also directed an enquiry as to mesne profits under Order XX, Rule 12 of the Code of Civil Procedure.

In Regular Civil Appeal No.48 of 2002, the lower Appellate Court has maintained the decision of the Trial Court by dismissing the appeal on 7-6-2011 granting thirty days' time to the appellants to comply with the decree. The decree has already been executed and the plaintiff is in possession of the suit property.

The plaintiff is held to be the owner of the suit property on the basis of the registered sale-deed dated 11-12-1984, said to have been executed by the legal representatives of Mukim Khan. The contention of Shri Mehta, the learned counsel for the appellant No.1, is that there is nothing on record to show that the vendors of the plaintiff were the legal representatives of Mukim Khan. He admits that though the point was raised in the written statement, neither the Trial Court framed an issue nor the lower Appellate Court framed the point for determination as to whether the vendors of the plaintiff were the legal representatives of Mukim Khan. It is further urged that the land in question belonged to the Government. However, none of the Courts below have dealt with this aspect of the matter, obviously for the reason that it was not raised or pressed.

Thus, no substantial question of law arises for consideration.

The second appeal is dismissed.

Civil Application (CAS) No.590 of 2016 :

By consent of the learned counsels for the parties, the application is allowed.

The names of the legal representatives of the appellant No.2 are permitted to be brought on record. Necessary amendment be carried out within a period of one week from today, failing which the application shall stand dismissed without reference to the Court.

Shri R.A. Mirza, the learned counsel, appears for the legal representatives No.1 and 3 of the appellant No.2.

The civil application is disposed of.

Civil Application (CAS) No.656 of 2016 :

In view of the aforesaid order passed in second appeal, this civil application for permission to file additional documents on record, does not survive, and the same stands dismissed.

Judge.

Lanjewar