

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 641 OF 2012

Udhavrao s/o Sadaashivrao Gurude,
Age : 74 years, Occu. Agril.,
R/o jagalpur (Bk.), Tq. Ahmedpur,
District Latur

APPELLANT
(ORIG. DEFENDANT)

VERSUS

Namdev s/o Maruti Gaikwad,
Age : 69 years, Occu. Agril.,
R/o jagalpur (Bk.), Tq. Ahmedpur,
District Latur

RESPONDENT
(ORIG. PLAINTIFF)

Mr. A.N. Irpatgire, Advocate for the appellant
Mr. J.R. Patil, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 2nd AUGUST, 2017

ORAL ORDER :

Heard the learned counsel for the parties.

2. The original defendant in Regular Civil Suit No. 272 of 1993 has challenged the concurrent finding of facts recorded by the learned Trial Judge in the judgment dated 30th January, 2003 and by the First Appellate Court in the judgment dated 10th November, 2011 in Regular Civil Appeal No. 10 of 2011 (new) and 14 of 2003 (old), whereby the suit filed by the respondent

for declaration of his title to the suit land and the claim for perpetual injunction to protect his possession thereon has been accepted and the counter claim by the appellant has been dismissed.

3. The learned counsel for the appellant submits that the learned Trial Judge has not considered the evidence on record in its proper perspective and has drawn perverse finding holding the respondent as the owner of the suit land. He further submits that the evidence on record was not sufficient to establish that the respondent is in exclusive possession of the suit land and therefore, the relief of perpetual injunction also was not liable to be granted in his favour. According to him, the predecessor-in-title of the respondent in respect of the suit land was his father Maroti, who had purchased the suit land from one Chaturabai, who herself was not having perfect title thereto. He submits that there is positive evidence on record to show that the land admeasuring 3 Acres out of block No. 517 (old survey No.91) was proved to be in possession of the appellant. However, the claim of the appellant for perpetual injunction to possess over that land has been wrongly rejected by the Trial Court and

the First Appellate Court. He then submits that the Trial court has specifically held that the brother of the appellant namely Rajpal, who had purchased the land admeasurng 3 Acres out of block No.517, was a necessary party. However, the Trial Court recorded a contradictory finding that the suit is not bad for non-joinder of Rajpal. According to him, these are the substantial questions of law which are required to be considered in this Second Appeal. Therefore, the appeal may be admitted.

4. On the other hand, the learned counsel for the respondent submits that the appellant, in paragraph No. 16 of the written statement, mentioned that the suit is bad for non-joinder of necessary parties i.e. the other legal heirs of the deceased Maroti. It was not the case of the appellant that the suit is bad for non-joinder of Rajpal and therefore, there was no question before the Trial Court as to whether the suit was not maintainable for non-joinder of Rajpal. He submits that the Trial Court made mention of Rajpal in connection with the counter claim set up by the appellant, wherein it was necessary to add Rajpal as a party. He submits that the Trial Court has rightly negatived the issue in respect

of non-joinder of necessary party. The learned counsel for the respondent further pointed out to paragraph No.2 of the written statement, wherein the appellant specifically admitted that the deceased Maroti had purchased the suit land under two sale-deeds dated 18th December, 1985 and further admitted that the deceased Maroti was in possession of 20 Acres of land, which he had purchased under the sale-deeds and that after his demise, his four sons succeeded the property i.e. the suit land. He submits that in view of this clear admission on the part of the appellant, there was no difficulty in accepting the claim of the respondent that he is the owner and possessor of the suit land. He then submits that the appellant tried to claim possession over 3 Acres of land on the basis of the report of the Court Commissioner. He submits that the Trial Court as well as the First Appellate Court have rightly rejected that claim of the appellant because the Court Commissioner cannot decide the question of possession of the party over any particular land. Moreover, after the demise of Maroti, notices were not served on his legal heirs about the proposed work of the Court Commissioner. He submits that there is absolutely no substantial question of law involved in this appeal.

5. As per Order-I Rule 13 of the Code of Civil Procedure, all objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived. As seen from the written statement filed by the appellant, no objection has been raised that the suit is bad for non-joinder of Rajpal. Therefore, even if the Trial Court found that Rajpal was a necessary party for the counter claim set up by the appellant, the suit cannot be held to be bad for non-joinder of Rajpal. Moreover, the appeal memo filed by the present appellant before the First Appellate Court does not contain a ground that the suit was bad for non-joinder of Rajpal. The said ground seems to have been waived. In the circumstances, the question that the suit was bad for non-joinder of Rajpal, cannot be considered in the Second Appeal.

6. So far as the title to and possession over the suit land as claimed by the respondent is concerned, the

admissions of the appellant in paragraph No.2 of the written statement themselves are sufficient. He specifically admits that the suit land was purchased by the deceased Maroti under two sale-deeds dated 18th December, 1985 and that he was in possession of the suit land until his death and after his death, his four sons succeeded the suit land. The respondent is claiming to have succeeded the suit land from his father Maroti. The documentary as well as oral evidence produced on record support the claim of the respondent in respect of his title to and possession over the suit land. Even otherwise, these are the factual issues which can not be gone into in this Second Appeal.

7. The learned counsel for the appellant submits that the suit land was governed by the Tenancy Law. The deceased Maroti has purchased it without obtaining prior permission of the Collector. Therefore, the sale-deeds executed by Chaturabai in his favour were hit by Section 50B of the Hyderabad Tenancy and Agricultural Lands Act and were invalid. This ground is not at all sustainable since it will be a matter between the seller and purchaser of the said land or the Collector to hold that the said transaction is void. Nobody has challenged the

said transaction on the ground that they were effected without obtaining the necessary permission and therefore, they were void as per Section 50B of the Hyderabad Tenancy and Agricultural Lands Act. The appellant has no locus standi to challenge the said sale transactions. As such, the said point also does not survive.

8. In view of the discussion hereinabove, there is no substantial question of law involved in this Second Appeal. It is liable to be dismissed and accordingly dismissed. No costs.

[SANGITRAO S. PATIL]
JUDGE

npj/sa641-2012