

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 547 OF 2016
WITH
CIVIL APPLICATION NO. 11282 OF 2016
IN
SECOND APPEAL NO. 547 OF 2016

Khatunbi W/o Babu Mulani
since deceased through her L.R.s-

1] Sugrabi W/o Nabilal Lalikote
since deceased through her only son-

1-A] Shabbir S/o Nabilal Lalikote,
Age : 56 years, Occu.: Agriculture,
R/o: Village Karajkheda, Taluka and
District : Osmanabad

2] Habib S/o Babu Mulani,
Age : 70 years, Occu. and
R/o : As above

3] Bebi Abdul Shaikh,
Age : 76 years, Occu. and
R/o : as above

4] Ismail S/o Babu Mulani
since deceased through his L.R.s -

4-A] Shaikh Mehaboob S/o Ismail Mulani,
Age : 45 years, Occu. and
R/o : as above

5] Usman S/o Babu Mulani,
Age : 65 years, Occu. and
R/o : as above

.. Appellants /
(Orig. Defendants)

Vs.

1] Rajesaheb S/o Govindrao Patil,
Age : 67 years, Occu.: Agriculture,
R/o : Village Karajkheda, Taluka
and District : Osmanabad

2] Bhausahab S/o Govindrao Patil,
Age : 61 years, Occu. and
R/o : as above

3] Lata W/o Ram Patil,
Age : 62 years, Occu. and
R/o : As above

.. Respondents
(Orig. Plaintiffs)

Mr. Rajendrraa Deshmukkh, Advocate for the appellants / applicants
Mr. M.P. Tripathi, Advocate for respondent nos. 1 to 3

CORAM : SUNIL P. DESHMUKH, J.
DATE : 11/01/2017

ORAL JUDGMENT :

1. Heard learned counsel for the appearing parties.
2. It is defendant no.5, who is before this Court in Second Appeal against the concurrent judgments and decrees one passed by trial court in regular civil suit no.66 of 2011 and the other by district court in regular civil appeal no.175 of 2014, confirming decree of injunction restraining defendants from interferring with plaintiffs' possession over suit property bearing gut no. 575 admeasuring 2 hectors, 10 Are, situated at village Karajkheda, Taluka and District – Osmanabad.
3. It appears that suit land originally had come to Khatunbi

from her mother. Khatunbi had executed registered sale deed in favour of one Balbhim Andoji Sathe in respect of said lands. Later around 1980, Balbhim Sathe executed a registered sale deed in favour of one Shivaji Sadashiv Chavan in respect of gut no. 575 (erstwhile survey no.17) referring to the description of the property.

4. Khatunbi had instituted regular civil suit no. 250 of 1980 seeking permanent injunction against Lalasaheb Govindrao Patil, Balbhim Andoji Sathe and Shivaji Sadashiv Chavan, however, the said suit was dismissed in default on 12/07/1989 and no further proceedings were taken up by Khatunbi.

5. Said Shivaji Chavan executed sale deed on 02/08/2001 of the entire gut no. 575 in favour of plaintiffs no.1 and 2 and husband of plaintiff no.3 and accordingly, a mutation entry had been recorded in their favour bearing no. 738.

6. It appears that there had been some revenue proceedings in respect of the alienations by Khatunbi before the revenue authorities, particularly mutation entries bearing no. 74, 75 and 76, which now rests at mutation entry bearing no. 1376, however, it appears that the present land has no concern with the said mutation entry. It appears that Khatunbi had taken out some revenue

proceedings against mutation entry in respect of the said land and initially, mutation entry, which had been made in favour of the predecessor of the present plaintiffs, appears to have been set aside at the appellate stage and the matter was remanded and said remand orders are pending before this Court. Be that as it may.

7. It was around February, 2011, plaintiffs approached police station, complaining about threats to their possession and obstruction over the suit property at the hands of the defendants. The present proceeding in the form of regular civil suit ensued, seeking injunction against the defendants.

8. Defendants no.1 to 4, who are sons and daughters of deceased Khatunbi, did appear after receipt of summons, however, had not filed written statement. As such, the matter went without their written statement.

9. Defendant no.5, one of the sons of deceased Khatunbi filed written statement and denied contents of the plaint. He denied the sale deeds referred to hereinbefore and it is contended that the plaintiffs would never be the owners of the suit property. The property continued to be owned by deceased Khatunbi and after her, her heirs are in possession of suit property. Khatunbi had executed a

nominal sale deed, since she was in need of some amount in order to secure its repayment. However, possession had never been handed over to him. Khatunbi returned the amount of Rs.3000/-, but Balbhim Sathe had not re-conveyed the property to her. As such, according to him, all the alienations taking place thereafter are vacuous and without any efficacy. While consolidation scheme was being implemented, names of the defendants were mutated which show that there have been no objections by Balbhim Sathe. It has further been referred to that a dispute is going on before the revenue authorities in respect of mutation entries.

10. Trial court, with reference to aforesaid pleadings, had framed issues viz. whether the plaintiffs prove that they are the owners in possession of the suit property, whether the defendants obstructed to their possession and about the entitlement of plaintiffs to injunction.

11. On scanning and appreciation of evidence, the trial Court, relevant to the controversy in the suit, had referred to the revenue record and contention of the defendants that the same would depict their possession and has observed in paragraph no.22 that revenue documents do not prove ownership and possession of the defendants over the suit property and has further referred to that the plaintiffs

have discharged their burden of proving their possession over the same, by examining witnesses and the suit is filed simplicitor for injunction. The trial Court further found that there had been obstruction to the possession of the plaintiffs and, as such, had decreed the suit.

12. Defendants had been in proceedings against the aforesaid decree bearing regular civil appeal no. 175 of 2014 against the plaintiffs, taking up grounds that revenue record prior to 1972 and onwards continuously shows that the defendants are in possession, however, the same has not been properly appreciated by the trial Court. Defendant no.5 had denied the execution of the sale deeds in the written statement and the plaintiffs have not discharged their burden of proving sale deed in their favour. It would not be a case wherein it can be said that the contents of the sale deed stand proved merely by execution of document. Khatunbi had nominally executed the sale deed in favour of Balbhim Sathe, however, no possession had been delivered to him and trial Court has not considered said aspect. Record of consolidation also shows defendants to be the owners in possession of suit property. Revenue authorities too, in panchanama, on visiting the site, have found defendants to be in possession, however, no regard has been given to the same by the trial Court. The defendants, as such, claim possession over the suit property and

purported to challenge the decree against them.

13. The appellate Court framed issues for consideration viz; whether the plaintiffs proved their title and possession and alleged obstruction and whether they are entitled to injunction. The appellate Court has given findings in favour of the plaintiffs, holding that the plaintiffs have proved their title and possession to suit property and obstruction at the hands of the defendants and, as such, to entitlement to injunction, as sought by them in the proceedings was refused.

14. Appellate court has referred to that there had been earlier an attempt by the plaintiffs to seek interim injunction against the defendants by institution of regular civil suit no. 241 of 2009, which came to be withdrawn on 18/2/2011.

15. The appellate court has also observed that regular civil suit no. 250 of 1980 by Khatunbi for injunction against the defendants, came to be dismissed in default in 1989.

16. The appellate court has also been alive to the situation that neither deceased Khatunbi nor her heirs made efforts to question the first sale-deed dated 01/03/1972 nor the subsequent sale deeds

have been challenged by the defendants.

17. The appellate Court has taken into account that defendants/appellants have given lot of stress on the entries in regard to the records of rights, consolidation record and decision of revenue fori in hierarchy. According to them having regard to the same, the sale deeds relied on, can be said to have been not acted upon at all and such suit for injunction could not be maintained. While appreciating the evidence on record, the appellate court has considered that defendant no.5 has conceded to the title of the plaintiffs and further to that none of the sale deeds had been subject matter of challenge at the instance of the defendants. The appellate court has also considered the evidence on behalf of the plaintiffs and their witnesses and further considered that the defendants have not been able to impeach version of the witnesses on behalf of the plaintiffs.

18. Appellate court in paragraphs no. 19, 20 and 21 has observed:

"19. Apart from the verbal version of the witnesses, it reveals from the record the mutation entry no.74, 75 and 76 stood recorded in the name of purchasers time to time. It is fact that these mutation entries stood replaced by mutation entry no.1376 in the name of deceased Khatunbi and heirs.

20. It is well settled legal proposition that mutation entries do not confer title on the holder of the land or extinguish it. No doubt, the record of rights for the year 2011-2012, 2012-2013, 1969-1979 Exh 58, 63, 65, and consolidation extract Exh. 66 stand in the name of deceased Khatunbi in ownership and possession column. The revenue litigation was on right from 1982. Deceased Khatunbi defied the mutation entry no.74, 75, and 76 sanctioned by the then Tahsildar on 28.10.1980, in 1982. The Deputy Collector Osmanabad remanded the matter for denovo inquiry upon the appeal of deceased Khatunbi vide no.1982-RCR-A-10 Exh 69. The order stood confirmed by Additional Collector Osmanabad and Additional Commissioner Aurangabad in appeal no.1983-RCR-A-82 and appeal no.87/REV/R/38 on 3.3.1987 and on 30.6.1989 vide Exh 70 and 72 respectively.

21. Legal heir of Lalasaheb Patil viz. his wife Chandrakalabai got mutated her name in cultivation column of the land vide order of Tahsildar on 6.1.1990. Pursuant to the appeal of deceased Khatunbi, Sub Divisional Officer Osmanabad remanded the matter for afresh hearing on 29.6.41994. The impugned order came to be upheld by Additional Commissioner Aurangabad on 25.3.2009 as seen the backdrop of litigation from copy of order Exh.78. In Writ Petition no.5076 of 2009, the Hon'ble High Court Bench at Aurangabad was pleased to continue status quo order on 4.11.2009 against the order impugned of Sub Divisional Officer Osmanabad as reflected from copy Exh.99."

19. The appellate judge has also appreciated that there has been a long silence on behalf of the defendants despite the sale deeds being executed from time to time. The appellate court has referred to cross-examination of defendant no.5 who alone purported to explain the sale transaction under paragraphs 26 and 27, which are reproduced hereinbelow :

"26. In his cross-examination unnumbered last para of page no.2, defendant no.5 Usman admitted the sale transaction between Balbhim Sathe and Shivaji Chavhan with ignorance of next transaction. In his self-made statement, he tried to explain in the cross-examination that the transaction was not out and out sale but it was mortgage. His admission and tenor of cross-examination highlight the defendant no.5 Usman has knowledge of the first sale deed of 1972 and mutation entries standing in the name of plaintiffs' predecessor-in-title on the basis of sale-deeds. So mere non examination of the scribe of the sale-deed (original document on record) and proof thereof do not prove fatal to the plaintiffs case in the light of blatant admissions in the cross-examination of PW-5 Usman. So revenue entries which are meant for fiscal purpose does not infer the long standing possession of deceased Khatunbi over the suit land on the ground of varied verdict of revenue litigation.

27. The defendant no.5 Usman has no evidence within the norms of section 92 of the Evidence Act to contradict the documents i.e. the sale-deed. In the defendant no.5 Usman did not take an exception to all sale transactions by separate relief or by counter claim. His sole evidence is not conceivable and reliable to hold the transactions in question were other than sales. So the evidence of plaintiffs finds worthy of acceptance as to their title and possession over the suit land. With due respect, I do not agree with the submissions of learned counsel for defendants in support of the defence. Per contra, sharing with the submissions of learned counsel for plaintiffs, I record affirmative findings point no.1,2 and negative point no.3."

20. Learned counsel for the respondents, during the course of his arguments in second appeal, purported to raise some dispute about the description of the property. Such a defence has never been taken and questioning the same now, particularly in the face of the

fact that entire gut no. 575 is dealt with, loses its significance and, as such, stands dealt with accordingly.

21. Having regard to that the suit has been for simplicitor injunction and the courts, on appreciation of evidence, particularly, the trial court which had first hand experience of judging the evidence by the witnesses and the contemporaneous revenue and other record while sale deeds were effected which favoured plaintiffs, as has been made available by the parties before the court, has adjudged that the plaintiffs have a stronger case than the one pleaded by the defendants and has granted the decree in their favour. The appellate court, also on appreciation of evidence, as aforesaid, has reached to a conclusion that the plaintiffs have a better case than the defendants and, as such, confirmed the decree, finding that the evidence would show plaintiffs to be better placed seeking preventive relief especially gauging the same by that the sale deeds had not been questioned till date. It appears that disputes before revenue authorities are yet not finally over. In the circumstances, simply for the reason that other view possibly could have been taken, the second appeal would hardly be maintainable. In the circumstances, the Second Appeal does not appear to give rise to any question, which can be said to have substantially arisen for decision in the matter, the same is not being entertained and stands dismissed.

22. Consequently, Civil Application no. 11282 of 2016 filed in the present second appeal, seeking stay to the impugned judgment and decree dated 20/8/2014 also stands disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/