

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 105 OF 2016

Draupadi Sonu Velip (Deceased)

Through legal heirs and 3 Ors.,

... Appellants.

Versus

Kusta Shaba Sawant Dessai (deceased)

And 7 Ors.,

... Respondents

Mr. Cleofato G. A. Coutinho and Mr. R. Dessai, Advocate for the Appellants.

Mr. R. G. Ramani, Advocate for Respondent nos. 1(a) to 8.

Coram : N.M. Jamdar, J.

Date : 14 December 2017.

ORAL ORDER:

By this Second Appeal, the Appellant-Original Plaintiff has challenged the concurrent Judgments and Decrees passed by the Civil Judge Junior Division, Quepem and the learned District Judge, South Goa, dismissing the suit and Appeal.

2. The Appellant filed a suit bearing no. 18/2004/B in the Court of Civil Judge Junior Division, Quepem on 3 April 2004. The case of the Appellant was that the Appellant are owners in possession

of property named “BONDOIN BAGA” or “GORMANS” situated at Naquerim in Quepem Taluka described in the Land Registration Office under no. 7951 in three additions. According to the Appellant-Plaintiff, the property was originally owned by Jiva Velip and his wife and Mono Velip and his wife and their descendants. According to the Appellant, the Appellants became owners of the suit property and their name also appear in the records in occupants column. The Respondents tried to interfere with their possession and tried to take away some of the cashew fruits planted on the suit land, and therefore the Appellants had to file a suit seeking permanent injunction. The Respondents filed their written statement and contended that the Appellant-Plaintiffs have no connection whatsoever with Jiva Velip and Mono Velip, who have not been joined as party respondents. Their contention was that the Appellants, by fabricating certain documents, have sought to lay claim to the suit property. The Respondents on these and other grounds resisted the prayers sought for by the Appellants.

3. The learned Civil Judge Junior Division framed an issue as to the title of the Appellants and of possession, and held both to be in negative, against the Appellants. The learned Civil Judge considered the evidence on record and found that the Appellants have not established the title, consequently, their locus standi, and the

connection with the suit land. The learned Civil Judge also held that the Appellant failed to produce cogent evidence for grant of injunction, as per the test laid down by the Apex Court in the case of *Karnataka Board of Wakf v/s. Government of India and others*¹.

4. The Appellant-Plaintiffs thereafter filed Regular Civil Appeal bearing no. 56 of 2013 in District Court, South Goa, Margao. The learned District Judge framed issues as regards the title and possession of the Appellants and answered them in the negative. The learned District Judge held that the Appellant failed to produce any evidence as to the title of the Appellant, and also considering the evidence on record, merely on the ground that their name appears in the revenue records in occupants column, an order of permanent injunction cannot be granted. Learned District Judge accordingly dismissed the Appeal by Judgment and Order dated 27 October 2004. Thereafter, present Appeal is filed.

5. The learned Counsel for the Appellants, firstly, contended that the findings of both the Courts that the Appellants have no concern with the suit property and have no title, is incorrect. It was submitted that material was on record to demonstrate the connection of the Appellant to the predecessors, i.e. Jiva Velip and Mono Velip. It was submitted that, even assuming the issue of title

¹ 2004(10)SCC 779

was not in favour of the Appellants, since the Appellants were in settled position, order of injunction ought to have been passed. It was submitted that the name of the Appellants appears in the occupants column in revenue records, which fact is even admitted by the Respondents in their written statement. Both the Courts have not given effect to the statutory presumption arising from the revenue records. Reliance was placed on the decisions in the case of *Balwant Singh and another etc. v/s. Daulat Singh (dead) by L.Rs and others*²; *Bhavesh Harishchandra Shiroadkar v/s Babuli Mahadev Chodankar*³; *Tukaram Rajaram Suple and Ors. V/s. Sonba Chindhu Mall*⁴; and *Govind Anand Goltekar and Ors. V/s. Dasharath Deoba Goltekar*⁵; and to contend that if in a suit for injunction, the statutory presumption arising from Record of Rights is not considered, then it will give rise to substantial question of law. It was submitted that in the present case also there is no reference to statutory presumption by both the Courts.

6. Firstly, as far as the issue of title is concerned, it has to be seen that the Appellants filed a suit for injunction based on them being owners of the suit property. The issue as to the title was framed by both the Courts and parties led their evidence. It was the

2 AIR1997SC2719

3 MANU/MH/0737/2012

4 AIR1959Bom63

5 AIR2006Bom174

contention of the Respondents that the Appellants have no concern with the suit property and therefore cannot seek relief of injunction. This being the contentious issue, the issue of title, consequently the connection of the Appellant to the suit property was the most important issue being considered. There is no title deed relating to the suit property, which bears the name of the Appellant, placed on record. What is relied upon is a land revenue certificate. This certificate has been considered by both the Courts. The Courts have recorded the findings that it is not registered or incorporated in the name of Jiva Velip and that there is a Deed of Hypothecation executed by Jiva Velip and Mono Velip in favour of one Mr. Egidio Benedicto Cardozo. The documents show that the property was mortgaged by Jiva Velip to Mr. Egidio Benedicto Cardozo and it was described under no. 7951 in the name of Mr. Egidio Benedicto Cardozo. Form I and XIV was produced at item 31 showing the names of the persons other than Plaintiffs and the Plaintiffs could not establish their connection with these persons. In fact, in the First Appeal during the course of the oral arguments, the Appellant had to virtually concede that the Appellants have no title to the suit property but has long possession. Therefore, it is not a case of a suit simpliciter for injunction based on possession, but the Appellant came to the Court specifically contending that the Appellant has title to the suit property thereby connection to the same. The title deeds placed on

record show the name of some other persons. This factum cannot be ignored while considering the claim of the Appellants for grant of permanent injunction.

7. As far as the contention based on the Record of Rights is concerned, it is not that the moment the name appears in the occupants column the Court is not required to look at any other aspect and straightaway grant an order of injunction. Records may raise a statutory presumption, but it is only a presumption. The Appellant stepped in the witness box. When he was cross-examined, he gave various admissions showing his ignorance about the identification and description of the suit property. He could not give the area of the first addition, could not give the certificate number and the description of the properties bounded on all sides. He could not give certificate number of the property in the second addition. He could not give the name of the owners on the boundaries. He also admitted that he does not know these areas of survey no. 13/0 in possession of the neighbours. Both the Courts, therefore, having analysing this evidence, came to the conclusion that the Appellant failed even to identify the property.

8. Therefore, what is on record is the evidence that the Appellant is not concerned with the suit property. Secondly, he is not

able to identify the property. Weighing this evidence on one scale, both the Courts refused to grant injunction based only on the entry in the Record of Rights in the occupants column, which the Respondents alleged was manipulated. In the decisions which are cited, it is not the position of law laid down that even in the circumstances such as in the present one, only on the basis of entries in the Record of Rights, an order of injunction has to be granted ignoring all other aspects on record. Therefore, even assuming the suit was for injunction based only on possession, which it is not, considering the totality of the evidence, both the Courts have analysed the same and have drawn correct inferences. Both the Courts have taken into consideration the fact of the Records of Rights, however, have not based their findings only on this document. There is no error in taking this view. No substantial question of law arises. The Second Appeal is, accordingly, dismissed.

N.M. Jamdar, J.