

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****LETTERS PATENT APPEAL NO.176 OF 1995**

Jagannath Sobharam Bhatt]
(Since Deceased) Through LR.] ... Appellant

Versus

Shri Keshav Ramji Shinde.] ... Respondent

Mr. Prasad B. Kulkarni for Appellant.
Mr. Rajesh B. Parab for Respondent.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE :- 14 NOVEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. The above Letters Patent Appeal is filed by the Appellant (original Defendant) challenging the Judgment and Order dated 13/11/1995 passed by the learned Single Judge of this Court dismissing the First Appeal No.717 of 1977 and thereby confirming the Judgment and Decree passed by the learned Judge, City Civil Court, Bombay in Suit No.1428 of 1967. The present Respondent is the original Plaintiff.

2. The case of the Plaintiff was that, since 1952 he was in continuous, uninterrupted and peaceful possession and occupation of the land bearing Survey No.27, Hissa No.12 admeasuring about 14 gunthas situated at Village Kirol, Ghatkopar, in Greater Bombay. The present Appellant – Defendant claimed to be the owner of the plot of land bearing Survey No.27, Hissa No.10 which was adjoining to the land bearing Survey No.27, Hissa No.12. It was further the case of the Plaintiff that one Dhanjibhai Cama was shown as the owner of the land bearing Survey No.27, Hissa No.12 in the Record of Rights. The Plaintiff claimed to be the owner of the piece of land i.e. Survey No.27, Hissa No.12 by virtue of the continuous, uninterrupted and adverse possession thereof. According to him, in or about January 1960, he demolished the hut in which he was residing with a view to build a chawl thereon. At that time, the Defendant - Appellant approached him and claimed that the plot of land in possession of the Plaintiff was a part of Survey No.27, Hissa No.10 of which the Defendant was the owner. The Defendant threatened to cause trouble. Based on such representation, which the Plaintiff believed to be true, that the Defendant was the owner of the part of the land on which the Plaintiff wanted to construct a chawl, and to avoid further

trouble, the Plaintiff was persuaded to enter into a Lease Deed dated 23/01/1960 for lease of the plot of land admeasuring about 3 gunthas with the Defendant. It is further the case of the Plaintiff that the Defendant, in spite of repeated demands, did not provide the necessary documents. In the month of December 1964, an enquiry was started by the Enquiry Officer, City Survey, B.S.D. in respect of the land in possession of the Plaintiff and the said enquiry ended on 20/12/1965. That time the Plaintiff came to know that the plot of land in his possession was not forming part of Hissa No.10 but was part of Hissa No.12; with which the Defendant had no concern at all. In the said enquiry, the Plaintiff was recognized as the occupier of the said plot from the year 1952. The said entry was not objected to by the original owner of Survey No.27, Hissa No.12. In these circumstances, the Plaintiff claimed that the Lease Deed dated 23/01/1960 was void and was not binding on him and the Defendant had played fraud on him. The Plaintiff's case in the plaint further reveals that, since November 1966, there was an attempt to dispossess him forcibly and in January 1967 the Defendant even attempted to put a fencing around the plot. In these circumstances, the Plaintiff filed the Suit No.1428 of 1967 on 06/03/1967 for the declaration that

the Defendant had no right, title or interest in the piece of land in possession of the Plaintiff and that the Lease Deed dated 23/01/1960 be set aside and cancelled. The Plaintiff had also prayed for permanent injunction against the Defendant from trespassing on the land in possession of the Plaintiff.

3. The present Appellant – Defendant contested the suit and filed his Written Statement. Besides denying the averments in the plaint, the Defendant mainly contended that there was no Hissa No.12 in Survey No.27 in existence at all until 1963-65 and the Plaintiff, through foul methods, brought it into existence in the record books. The Defendant further contended that the Plaintiff was in occupation of a portion of the Defendant's plot of land as the Defendant's tenant and did not have any independent right. It was further contended by the Defendant that he had terminated the tenancy and therefore the Plaintiff had no right to remain in possession. It was also the case of the Defendant that, since by the Lease Deed dated 23/01/1960 the Plaintiff had accepted the defendant as being the owner of the land, he was estopped from claiming otherwise. The Defendant claimed that he was not aware of any enquiry having been carried out in

respect of the said piece of land. Based on these contentions, the Defendant prayed that the suit be dismissed.

4. Based on the pleadings, the issues were framed, including the legality of the Lease Deed dated 23/01//1960 and the question of estoppel operating against the Plaintiff; besides other issues reflected in the prayers in the plaint. In the suit, the Plaintiff and the Defendant examined themselves. The Defendant also examined one Sitaram Anerao who was a Clerk in the office of Land record and one Vasant Bhide who has produced the General Electoral Roll from 28/12/1967 to 19/12/1972. Besides this oral evidence, documentary evidence was also tendered.

5. After considering the evidence on record and hearing the parties, the learned trial Judge decreed the suit in favour of the Plaintiff by his Judgment and Decree dated 25/06/1976. It was held and decreed that the Defendant had no right, title and interest or claim in the said plot of land being Survey No.27, Hissa No.12 and the Lease Deed dated 23/01/1960 was set aside and cancelled. The Defendant was permanently restrained from trespassing upon the said

piece of land and from disturbing or interfering with the peaceful possession of the Plaintiff. Whilst arriving at the said conclusion, the learned Judge mainly relied on the enquiry proceedings whereby it was clearly shown that, there was Hissa No.10 as well as Hissa No.12 in existence in respect of Survey No.27. The said enquiry report was challenged unsuccessfully by the Defendant before the various authorities firstly before the Sub-Divisional Officer and then before the Commissioner for Bombay Division. The learned Judge of the Trial Court held that the order of the Commissioner for Bombay Division dated 22/04/1968 holding that the enquiry was proper, had attained finality. The learned Judge of the Trial Court has further held that earlier in Hissa No.12 there was mention of 'Phalni No.1' which was never owned, purchased or was in possession of the Defendant. Based on these findings, the learned Judge decreed the suit as mentioned earlier.

6. The Appellant herein challenged the Judgment and Decree passed by the Trial Court before this Court vide First Appeal No.717 of 1977 before a learned Single Judge. The learned Single Judge of this Court, vide Order dated 13/11/1995, was pleased to dismiss the said

First Appeal. Whilst dismissing the said First Appeal, the learned Judge accepted the reasons given by the Trial Court. The finding that there was a separate existing Hissa No.12 on Survey No.27 in the record, was accepted and it was also held that the Defendant had no right whatsoever in respect of that particular plot of land. It was observed that the contention regarding non-existence of Hissa No.12 was baseless. The specific defence taken by the Defendant that the Lease Deed was pertaining to 3 gunthas of the land out of Hissa No.10, was held to be false. The Appellant i.e. the original Defendant has challenged the Judgment and Order dated 13/11/1995 passed by the learned Single Judge of this Court by way of the present Appeal.

7. We have heard the learned Counsel for the Appellant Mr.Prasad B. Kulkarni and learned Counsel for the Respondent Mr.Rajesh B. Parab.

8. The main contention of Mr. Kulkarni is that the learned Single Judge as well as the learned trial Judge erred in relying on the entries in the revenue record for determining the contentions of the parties. He submitted that the entries in the revenue record can never

determine right, title and interest of the parties. He submitted that the Plaintiff has failed to prove that he had any right of possession in respect of the said piece of land which was owned by the Defendant.

9. Per Contra, Mr. Parab supported the impugned Order.

10. In the present case, the entries in the revenue record are not relied upon by the Trial Court and the first Appellate Court to determine the title of the parties. However, it was necessary to refer to those entries to find out the existence of the piece of land bearing Hissa No.12 in Survey No.27 which was necessary in view of the fact that the Defendant had taken a specific defence that no such piece of land bearing Hissa No.12 in Survey No.27 ever existed and it was brought into existence only after 1963 during the enquiry proceedings. The case of the Defendant was that the Plaintiff was in possession of the piece of land which was part of Hissa No.10 of Survey No.27. To test this contention, it was necessary for the Trial Court to refer to the entries in the revenue record. Both the Courts i.e. the Trial Court and the learned Single Judge, have rightly held that the enquiries conducted by the revenue authorities clearly show

that Hissa No.12 in Survey No.27 separately existed and Hissa No.10 was adjoining to it. The said enquiry report was challenged by the Defendant firstly before the Sub-Divisional Officer and then before the Commissioner for Bombay Division unsuccessfully and the order of the Commissioner had become final. Therefore, it was not open for the Defendant to claim that no such Hissa No.12 ever existed and for determination of the said issues, there was no error committed either by the Trial Court or by the learned Single Judge of this Court in relying on those entries.

11. It was further held by the Trial Court that the corresponding Sale Deed showed that the Defendant had purchased 1 acre and 4 gunthas from Survey No.27 Phalni No.2 vide Sale Deed dated 19/102/1936 from Dada Ladoji and Ganpat Ladoji. In this Sale Deed, Phalni No.1 was not included. By another Sale Deed, the Defendant purchased 1 acre, 4 Gunthas from Survey No.27, Phalni No.2. Here again, Phalni No.1 was not included. The record shows that Phalni No.1 was owned by one Dhanjibhai Cama and Phalni No.2 was owned by one Gundal. Thus, it was clearly established that the Defendant had nothing to do with Hissa No.12 Survey No.27 which

was originally Phalni No.1 of Survey No.27. The learned Judge has also held that since subsequently it was disclosed to the Plaintiff that the land never belonged to the Defendant, the Plaintiff had every right to question the title of that portion of the land and therefore, the Plaintiff was not estopped from questioning the title of the Defendant in respect of the piece of land, particularly when the finding was recorded that the Lease Deed dated 23/01/1960 was obtained by fraud, misrepresentation and force practiced by the Defendant. More importantly, Section 116 of the Evidence Act will not be applicable in this case against the present Respondent – Plaintiff, because the purported Lease Deed dated 23/01/1960 was specifically in respect of Hissa No.10 of Survey No.27 whereas the reliefs in the suit were claimed in respect of Hissa No.12 in of Survey No.27.

12. Considering all these factors, we are of the view that no case for interference with the impugned Order is made out. The Letters Patent Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)