

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.618 OF 1994

Narayan Prabhu Patil ... Appellant
Versus
Shri Babu Gouraji Gundulkar And Others ... Respondents

**ALONGWITH
SECOND APPEAL NO.617 OF 1994**

Narayan Prabhu Patil ... Appellant
Versus
Shri Vithoba Appa Patil @ Gawada
And Others ... Respondents

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Mr. M.J. Chettiwal i/b S.M. Kamble for the Appellant in both the second appeals.

Mr. R.S. Kate for Respondent No.1 in SA/618/1994 and for Respondent Nos. 1 to 3 in SA/617/1994

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CORAM : S.C. GUPTE, J.

DATE : 9 FEBRUARY 2017

P.C. :

. This second appeal challenges a judgment and order passed by Additional District Judge at Kolhapur in Regular Civil Appeal No.441 of 1993. By the impugned judgment and order, the learned District Judge allowed the Respondents' appeal and set aside the judgment and decree passed by the Civil Judge, Junior Division at Chandgad, decreeing the Appellant's suit.

2 The Appellant (original Plaintiff) had filed the present suit for a permanent injunction against Respondent No.1 herein (original Defendant No. 1) restraining the latter from obstructing the Appellant's peaceful joint possession and enjoyment of the suit land alongwith Respondent Nos.2 and 3 (original Defendant Nos. 2 and 3). The Trial Court found the Plaintiff's title and possession of the suit land, which was said to be a joint family property belonging to him and Defendant Nos.2 and 3. The Trial Court held that Defendant No.1 had illegally entered his name in the record of rights and obstructed the Appellant's possession of the suit land. The First Appellate Court allowed the appeal holding that the Appellant had not proved his possession of the suit land and that he was not accordingly entitled to any perpetual injunction.

3 It was the case of the Plaintiff that Defendant No.1 had no concern with the suit property, which was owned jointly by the Plaintiff and Defendant Nos.2 and 3. The Plaintiff claimed that the property was owned originally by his father; that after the death of his father, the name of his brother, Jivaba, was entered in the record of rights as manager of the joint family; and that after the death of Jivaba, the Appellant became owner of $\frac{1}{2}$ share of the suit property as his legal heir, the other $\frac{1}{2}$ share being held by Defendant Nos.2 and 3. This case was specifically denied by Defendant No.1. It was the case of Defendant No.1 that his father purchased the suit land from Jivaba, who held the same as an owner in his own right and not as a manager of any joint hindu family. 7/12 extracts of the suit land between years 1958-59 and 1981-82 show the name of Jivaba in the column of ownership. His name does not appear anywhere as a manager of the joint hindu family. The name of Jivaba also appeared in

the column of 'cultivation' upto 1970-71. Thereafter, the name of Defendant No.1 was reflected in the column of 'cultivation' from year 1971 onwards and the same continued till 1982. Since 1982-83, the name of Defendant No.1 is shown in the both the columns, i.e. ownership and cultivation, till the date of the suit. The entry of the Defendant's ownership was duly certified by a mutation entry, which was also on record before the Court. The First Appellate Court accordingly held that the Revenue record clearly goes to show that Defendant No.1 was the owner and in possession of the suit property, whereas the Plaintiff had nothing to show in support of his case of title or possession.

4 Learned Counsel for the Appellant in support of this appeal submitted that the First Appellate Court simply relied on revenue records and that in the face of presumption as regards the joint status of the family, the shares of coparceners could not be said to have been alienated by mere mutation entries. Learned Counsel submits that the First Appellate court failed to note that the Plaintiff was in physical possession of the suit land having one half share therein.

5 In the first place, whatever be the documents relied on by Defendant No.1, it is for the Appellant, as the Plaintiff to assert and establish his title and possession of the suit property. The Plaintiff has no document to offer in support of either his title or possession. As against this, Defendant No.1 has produced evidence in the form of revenue record which at least *prima facie* establishes his title and possession of the suit land. The entries of 7/12 extract for all these years at least *prima facie* establish that Jivaba, the predecessor-in-title of Defendant No.1, owned the property in his own

right and not as a manager of the joint family. In the face of this evidence, which *prima facie* supports the case of Defendant No.1, the Plaintiff has produced no material to show that Jivaba was either the manager of the joint family or that he held the property on behalf of the joint family. Defendant No.1 claimed the suit property through sale by Jivaba. There is at least *prima facie* evidence before the Court that through a mutation entry the name of Defendant No.1 was entered into the record of rights and it has continued in the column of ownership since 1982-83 and in the column of cultivation since the year 1971. Besides, the Defendant's case is not only supported by his own testimony, but also a witness in addition to the revenue record of long standing relied upon by Defendant No.1. On the other hand, the Plaintiff/Appellant's claim of ownership and possession is simply based on oral evidence of himself unsupported by any documentary evidence.

6 In the premises, the finding of the First Appellate Court cannot be faulted on any question of law. There is no merit in the second appeal. The second appeal is dismissed. No order as to costs.

7 The companion appeal, namely, Second Appeal No.617 of 1994, which involves the other portion of the suit property claimed by Respondent Nos.1 to 3 in that appeal (original Defendant Nos.1 to 3), also involves no infirmity on any substantial question of law. Even here, the Appellant's case of title and possession is based on the same contentions, namely, the property being the joint family property and Jivaba being the manager of the family and the Plaintiff thus having share in it as

coparcener. For the reasons stated hereinabove, there is no merit even in this second appeal and the same is also dismissed with no order as to costs.

(S.C. GUPTE, J.)