

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 322 OF 2017

Amrut Vasudeo Pokade ... Appellant / Applicant
Versus
Shamrao Atmaram Sakhalkar and Ors. ... Respondents

ALONG WITH
CIVIL APPLICATION NO. 777 OF 2017

Mr. N.N. Gawankar a/w. Mr. Manas Gawankar for the Appellant / Applicant.
Ms. Preeti Walimbe i/b. Mr. Bhushan Walimbe for the Respondents.

CORAM : S.J. KATHAWALLA, J.
DATED : 19TH JUNE, 2017

P.C.:

1. Special Civil Suit No. 62 of 2008 was filed by Respondent No. 1 (original Plaintiff) before the Court of Joint Civil Judge, Ratnagiri (the Trial Court), wherein a declaration was sought that the Sale Deed dated 15th October, 2007 executed by Respondent No. 2 (original Defendant No. 2) in favour of the Appellant (original Defendant No.1) is illegal, null and void and for possession of the Suit property. The said Suit filed by Respondent No. 1 (original Plaintiff) was by a Judgment dated 10th August, 2011 decreed with costs by the Trial Court.
2. Being aggrieved, the Appellant (original Defendant No. 1) impugned the Judgment and Decree of the Trial Court, dated 10th August, 2011 by filing an Appeal being Civil Appeal No.112 of 2011 before the learned District Judge-2, Ratnagiri (the

First Appellate Court), which too was dismissed vide a detailed Judgment dated 24th October, 2016. The Appellant (original Defendant No. 1) once again being aggrieved therefrom, has preferred the above Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC).

3. For the sake of convenience, the Appellant and the Respondents are referred to hereinafter as per their original status i.e. as Plaintiff and Defendants, respectively.

4. The Plaintiff – Shamrao Atmaram Sakhalkar as set out hereinabove filed Special Civil Suit No. 62 of 2008 for a declaration that the Sale Deed executed by Defendant No. 2 in favour of Defendant No. 1 on 15th October, 2007 is illegal, null and void and for possession of the Suit land, which was the subject matter of the impugned Sale Deed.

5. The Plaintiff in his Suit contended :

- (i) That the subject matter of the Suit is land bearing Survey No. 169, Hissa Nos. 9A, 9B and 9C situated at village Dorle, Tal. Dist.-Ratnagiri (the Suit land) ;
- (ii) That in the year 1939 his father, under a registered Sale Deed purchased the Suit land from one Anandibai Phadke ;
- (iii) That pursuant to the registered Sale Deed, the father of the Plaintiff was put in possession of the Suit land, and his name was entered into the revenue record ;
- (iv) That in the year 1964, the preparation of map of Akarphod Patrak was also carried out as per the mutation entry bearing No.2558, wherein the name of his father was mentioned.

- (v) That his father was staying in Mumbai and his brother namely Ganesh Yashwant Sakhalkar (the father of Defendant No. 2) was staying at village and looking after the Suit land (which was not cultivable but barren land) on behalf of his father.
- (vi) That subsequently at the time of the preparation of Akarphod Patrak, Hissa No. 9 was sub-divided into Hissa Nos. 9A, 9B and 9C.
- (vii) That at the time of consolidation scheme, the name of his father was on record.
- (viii) That as per Akarphod Patrak, there was an enquiry and the name of his father was added as a owner of the said Suit land and the said entry was granted on 11th August, 1982.
- (ix) That Defendant No. 2 in the year 2007 filed Appeal No. 163 before the Special Land Acquisition Officer, Konkan Railway-II, which came to be allowed on 8th November, 2000 and mutation entry bearing No. 1020, came to be sanctioned on 15th November, 2000.
- (x) That thereafter, the name of Defendant No. 2 came to be entered in the revenue record as mutation entry No. 1208 and the name of Defendant No. 2 came to be recored in the revenue record vide mutation entry bearing No. 2933 dated 6th August, 2001.
- (xi) That Defendant No. 2 on the strength of the said revenue entries executed a Sale Deed of land bearing Survey No. 169, Hissa Nos. 9A and 9B on 15th October, 2007 in favour of Defendant No. 1 and accordingly the name of Defendant No. 1 came

to be entered in the revenue record vide mutation entry bearing No. 3131.

(xii) That the Plaintiff issued notice to the Talathi, Circle Officer and other Revenue Officers calling upon them to give explanation as to how the name of Defendant No. 2 was entered into the Record of Rights of the Suit land. However, they could not give any satisfactory explanation and therefore the Plaintiff was compelled to file the Special Civil Suit.

6. Defendant No. 1 in his Written Statement denied the title of the Plaintiff over the Suit land. He contended that in the revenue record, the name of the Plaintiff's father Shri Atmaram Yashwant Sakhalkar was shown as co-owner in respect of Survey No. 169, Hissa No. 9. He submitted that the Suit land came to be entered in the name of Defendant No. 2 vide mutation entry No. 2933 on 6th August, 2001, which mutation entry is not challenged by the Plaintiff till date. He further contended that he is the bonafide purchaser of the Suit land under a registered Sale Deed executed by the Defendant No. 2. He therefore submitted that the Special Civil Suit be dismissed.

7. Defendant No. 2 in his Written Statement contended that the Suit land is the joint family property of Plaintiff and Defendant No. 2. However, initially it was entered in the name of father of the Plaintiff being the elder son. He contended that during Akarphod Patrak, his father was in possession of the Suit land, however due to mistake the name of the Plaintiff came to be recorded in the revenue record and the 7/12 Extract. Thereafter, he preferred the RTS Revision / Appeal before the Sub Divisional Officer, Ratnagiri, which came to be allowed and accordingly mutation

entry bearing No. 2558 came to be recorded. He submitted that therefore the Plaintiff has no right to have the Sale Deed executed by and between Defendant Nos. 1 and 2, cancelled and the Special Civil Suit be dismissed.

8. The learned Trial Court therefore framed issues – Whether the Plaintiff has proved that he is the owner of the Suit land ? ; Whether the Plaintiff has proved that the Sale Deed executed on 15th October, 2007 by Defendant No. 2 in favour of Defendant No. 1 is null, void and ineffective ? Whether the Plaintiff has proved that he was entitled for the possession of the Suit land ? and Whether the Plaintiff has proved that he was entitled for the declaration as prayed for ?.

9. The Trial Court has after appreciating the oral as well as the documentary evidence recorded that the execution of the Sale Deed dated 12th October, 1939 executed by and between the father of the Plaintiff and one Anandibai Phadke is not denied by Defendant No. 2. The said Sale Deed is a registered Deed and the same reveals that the Suit land was purchased in the name of the father of the Plaintiff on 12th October, 1939. The mutation entry bearing No. 556 dated 27th March, 1953 (Exhibit-7) reveals that the name of the Plaintiff came to be entered in the revenue record in respect of the Suit land. The mutation entry bearing No. 2558 (Exhibit-8) reveals that the Suit land came to be recorded in the name of the Plaintiff as per Akarphod Patrak and general survey. The 7/12 Extract of the Suit land for the year 1995-96 are also produced on record (Exhibit-5), which reveals that the Suit land was recorded in the name of the Plaintiff. Defendant No. 2 has produced mutation entry

bearing No. 2908 dated 29th November, 2000 (Exhibit-9) by which the name of the father of Defendant No. 2 – Ganesh Atmaram Sakhalkar came to be entered into the revenue record in place of the Plaintiff on the basis of the purported Judgment and Order passed by the Special Land Acquisition Officer, Kokan Railway II, Ratnagiri. The Trial Court has noted that the purported Judgement and Order passed by the Special Land Acquisition Officer, Kokan Railway II, Ratnagiri is not produced on record by Defendants. In fact, the Plaintiff requested the concerned authority i.e. Sub Divisional Officer, Ratnagiri to produce papers of RTS Revision No. 3 of 1997 decided by the Deputy Collector, Land Acquisition Konkan Railway II, Ratnagiri. However, the Sub Divisional Officer, Ratnagiri has intimated vide letter (Exhibit-65) that the proceedings in RTS Revision No. 3 of 1997 are missing. Defendant No. 2 has not bothered to give evidence by entering into the witness box. The Trial Court has therefore held that the title of the landed property cannot be transferred on the basis of mutation entry like in the present case. The revenue entries are made for fiscal purpose and cannot confer title. The Plaintiff has produced on record the Sale Deed (Exhibit-58) to prove that his father has acquired title to the Suit land from one Anandibai Phadke under the registered Sale Deed dated 12th October, 1939, which fact is not disputed by the Defendants. The Trial Court has therefore held that the Plaintiff is the owner of the Suit land.

10. Again considering the oral as well as documentary evidence adduced by the Plaintiff and Defendant No. 1, the Trial Court also held that since the Plaintiff is the

owner of the Suit land, the question of Defendant No. 2 executing the Sale Deed in favour of Defendant No. 1 in respect of the Suit land or any party thereof, does not arise and therefore the Sale Deed executed by Defendant No. 2 in favour of Defendant No. 1 (Exhibit-40) is null and void and ineffective. The Trial Court further held that since the Plaintiff has proved his title over the Suit land, the Plaintiff is entitled to get Decree of possession. The Trial Court therefore by its Judgment and Decree dated 10th August, 2011 decreed the Special Civil Suit with costs.

11. As stated earlier, being aggrieved by the said Judgment and Decree passed by the Trial Court, Defendant No. 1 filed Civil Appeal No. 112 of 2011 before the District Judge-2, Ratnagiri. The Appellate Court has by its detailed Judgment dated 24th October, 2016, after appreciating the oral and documentary evidence filed by the parties, dealt with the contentions of the parties and has dismissed the Appeal.

12. The learned Advocate appearing for the Appellant has submitted that Defendant No. 1 is a very poor man. Being illiterate, he has lost an amount of Rs. 1 Lac, which he paid to Defendant No. 2 as consideration for the Suit land. In my view, the Trial Court as well as Appellate Court have after appreciating the oral as well as documentary evidence led / placed before these Courts by the parties, have by the detailed reasoned Judgments given concurrent findings on facts namely that the Suit land was purchased by the father of the Plaintiff from one Anandibai Phadke under the registered Sale Deed dated 12th October, 1939 and Defendant No. 2 has no right over the same and therefore the Sale Deed executed by Defendant No. 2 in favour of

Defendant No. 1 is illegal, null and void. Therefore , though one may sympathize with the fact that Defendant No. 1 has lost an amount of Rs. 1 Lac, no substantial question of law, arises in the present Second Appeal and the same is therefore dismissed. The above Civil Application is also dismissed.

(S.J.KATHAWALLA,J.)