

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
SECOND APPEAL NO. 446/2015
Santkumar Bhawarlal Santnami

v.

Jeewan s/o Harbaji Pohane (dead) through L.Rs. Sundarbai wd/o Jeewan
Phane and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri P.G. Bapat the learned counsel for the appellant
Shri R.S.Sundaram the learned counsel for the respondent

CORAM : V.M. DESHPANDE, J.
DATED : OCTOBER 30, 2017

Concurrent findings recorded by both the Courts below by which a suit for possession was dismissed by both the courts below, the unsuccessful plaintiff is before this Court.

Heard Shri P.G. Bapat the learned counsel for the appellant and Shri R.S.Sundaram the learned counsel for contesting respondent who was subsequently added as per the order passed during the pendency of this appeal.

It is not in dispute that the property in question i.e. suit house was originally owned by one Ramkrushna Paikuj and Vitthal. They created a mortgage in favour of the Vidarbha Premier Co-operative Society for availing the loan facility from the said society. It is also not in dispute that these two borrowers failed to repay the loan to Vidarbha Premier Co-operative Society. Consequently, proceedings were initiated against them by Vidarbha Premier Co-operative Society and the decree was passed in its favour.

The execution proceedings were also filed against these borrowers by the Vidarbha Co-operative Society.

In the execution proceedings auction was held and in that auction one Pandurang purchased the suit property on 27/2/1974. It is not in dispute that the said auction was not challenged by anybody before any court.

Auction purchaser Pandurang is father-in-law of defendant in suit Jeevan Gohane which gives rise to the present second appeal. This Jeevan Gohane is son-in-law of Pandurang. It is also not in dispute that Pandurang executed a Will in favour of his son-in-law and said Will is at Exh. 106 on the record and said Will is duly proved. Pandurang expired on 8/6/1982 thus, after his death, Jeevan became owner of the suit property as of Pandurang.

Be that as it may, according to the plaintiff/appellant this suit property was again put into auction by Municipal Corporation in the year 1981 for recovery of outstanding taxes in respect of the suit property and the present appellant purchased the suit property on 16/10/1981.

It is not in dispute that the contesting respondents namely the respondent Nos. 2 to 5 who were ordered to be joined as party respondent in the present second appeal have purchased the suit property during the pendency of the present second appeal.

The Courts below found that the appellant is not entitled for the possession of the suit property.

According to the learned counsel for the appellant Shri Bapat since he has purchased the property in an auction

purchase which was conducted by the Corporation for recovery of the taxes, he has become owner of the suit property.

Per contra, it is the submission of Shri Sundaram the learned counsel for the contesting respondent he has purchased the property from the legatee of Pandurang who purchased suit property in auction sale in the year 1974. That after the purchase of the suit property by Pandurang in the year 1974, Pandurang has become the owner of the suit property and therefore the Corporation at the most ought to have recover the taxes from Pandurang instead putting the property auction in auction on the assumption that Ramkrushna and Vitthal are the owners of the suit property.

After hearing the learned counsels, it is clear that originally the suit house was owned by Ramkrishna and Vitthal and they lost their title in pursuance to the decree passed by the competent Court and Pandurang has become the owner of the suit property. Therefore for recovering the taxes, it was always opened for the Corporation to recover the same from the title holder since the original owner has already lost their title in the execution proceedings.

Both the Courts below had considered this issue correctly, in my view. Further it is also not in dispute that from 1974 Pandurang and after his death Jeevan and after the execution of sale deed the contesting respondents are in possession of the suit property. In my view, there involved no substantial question of law in the present appeal. Consequently, the appeal is dismissed.

JUDGE