

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 640 OF 2016
WITH
CIVIL APPLICATION NO. 12836 OF 2016

Kalawati W/o Satling Mahtre ...Appellant

Versus

Anant s/o Ramesh Sakhare (Teli)
and Ors. ...Respondents

Mr. H. K. Munde, Advocate for Appellant
Mr. S.G. Chapalgaonkar, Advocate for Respondent Nos. 1 to 9

CORAM : A.M. DHAVAL, J.
DATE: 28th NOVEMBER, 2018

ORAL ORDER :

1. Heard learned Advocate Mr. Munde for the appellant and Mr. S.G. Chapalgaonkar, Advocate for the respondents.

2. This is original plaintiff's appeal. She had filed Regular Civil Suit No. 234/2002 before the 2nd Jt. Civil Judge, Junior Division, Osmanabad. She claimed that she was owner, possessor and cultivator of land admeasuring 3 H. 34 R. previous survey No. 259/8, now Gut No. 692 situated at village Ter, Tal. and Dist. Osmanabad. The respondents are legal heirs of original defendants Guruling and Mahaling, who were her cousins (real uncle's sons). Radhabai had filed RCS No. 33/61 against her nephews Guruling and Mahaling. It was decreed in terms of

compromise and she received possession thereof. The compromise recorded that her possession was to continue till during her life time. Thereafter, she was dispossessed and she filed RCS No. 134/1978 for possession and same was decreed. Radhabai received possession through Court on 5th December, 1991. Radhabai died on 7th September, 1992 leaving behind the plaintiff and her two sisters. The plaintiff claimed that she and her two sisters inherited the suit property and came in possession and the defendants had absolutely no concern. She however, claimed relief of only perpetual injunction to restrain the defendants from obstructing her peaceful possession over the suit land.

3. The suit was contested. The learned Civil Judge, Junior Division framed several issues relating to her lawful possession but no issue was framed regarding the plaintiff's ownership as there was no specific prayer for declaration of ownership. However, while dealing with the issue of lawful possession, the learned trial Judge decreed the suit and granted perpetual injunction.

4. The aggrieved defendants filed Regular Civil Appeal No. 197/2014. Learned First Appellate Judge framed points for determination which also relates to lawful possession and obstruction and not to the ownership of the original plaintiff. The First Appellate Court held that original plaintiff was not in possession. There were consistent revenue entries showing the

possession of the defendants. Radhabai has died in 1992, and thereafter, the possession of her daughter was not supported with any documents. The learned First Appellate Court when came to the conclusion that the plaintiff was not in possession, he unnecessarily discussed the provisions of section 14(1) and 14(2) of Hindu Succession Act to consider the ownership of the plaintiff after the death of Radhabai. There were no proper pleadings and prayer regarding the ownership rights of plaintiff-Kalawati. The earlier pleadings disclosed that the injunction was claimed only on the basis of possession obtained under the compromise decree. There was no dispute about the compromise and right of Radhabai to hold possession till her death. The dispute is about ownership and possession subsequent to Radhabai's death. When Radhabai's daughter Kalawati was not in possession, the issue of her ownership was totally irrelevant. The learned First Appellate Court in absence of specific pleadings, should not have considered the applicability of section 14 (1) and (2) of Hindu Succession Act. It was also not considered whether Radhabai would have any inherited ownership rights by virtue of her interest under Hindu Holdings rights to Property Act, 1937. I clarify that I am expressing no opinion about the right of ownership of Kalawatibai or Radhabai. I find that the observations of the First Appellate Court in para Nos. 32 and 33 regarding the ownership rights and applicability of section 14 (1) and 14(2) are totally uncalled for and irrelevant and should not be considered.

5. I find that the learned First Appellate Court in the light of the entries in the consistent 7/12 extract was justified in holding that plaintiff was not in possession on the date of suit in 2002. In view of the same, no substantial question of law has been raised, and therefore, the appeal deserves to be dismissed. I therefore, dismiss the appeal with the observations that the observations made by the First Appellate Court regarding the ownership will not be considered in any subsequent proceedings if filed by the plaintiff Kalawati or her sisters to claim declaration about their title and possession. With these observations, the appeal stands dismissed.

6. Civil Application, if any, stands disposed of. No order as to costs.

(A.M. DHAVALA)
JUDGE

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