

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

SECOND APPEAL NO. 295 OF 2018

Ananda Govind Chavan, Dead, through his L.R.s : ... Appellants.
A. Lilatai Anandrao Chavan, Dead,
through her L.R.s :
B. Pravin Ananda Chavan & Ors. i.e. (C) to (E).

V/s.

- 1) Abu Mohamad Patil (Patel), Dead, through L.R.s : ... Respondents.
A. Ramjan Abu Patel & B. to D.
- 2) Shamarao Ishwara Mahind, Dead, through L.R.s:
A. Uvaraj Shamarao Mahind & B. to D.
- 3) Sou Lalabee Hasan Jamdar
- 4) Sou. Chandabee Gulab Jamadar,
- 5) Chaman Hasan Jamadar
- 6) Sou. Noorabee Ismail Bargeer, Dead, through
L. R.s :
A. Dadaso Ismail Bargeer & B. to C.

Mr. Amitkumar D. Sale, Advocate for the Appellants.
None for Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : JUNE 14, 2018.

P.C. :

1 Heard learned counsel for the Appellants. None for the Respondents.

2 By this second Appeal, the concurrent findings on facts, as recorded by the trial Court and the first Appellate Court in judgment and order dated 22nd June, 2011 in Regular Civil Suit No. 475 of 1996 passed by the learned Civil Judge, Senior Division, Islampur and the impugned judgment and decree dated 08.12.2016 passed by the learned District Judge -II, Islampur in Regular Civil Appeal No. 85 of 2011, are challenged.

3 The present Appellants are the original Plaintiffs. They claim to be in possession of the suit property. They had filed the suit for injunction, restraining the Respondents from causing obstruction to their possession in the suit land, bearing City Survey No. 254, admeasuring 247.5 square meter, situated at village Kundalwadi, Tal. Walwa, District Sangli.

4 According to the Appellants, the suit property was ancestral property of one Rasul Khadir Patel, who died on 20th February, 1965, leaving behind him his four daughters. According to the Appellants, the Respondents 3 to 6 being the daughters of deceased Rasul K. Patel have sold the suit property to the Appellants by a registered Sale Deed dated 06.02.1992 for consideration of Rs. 10,000/- and since then it was claimed by the Appellants that they are in possession of the suit property.

5 It is submitted on behalf of the Appellants that the Respondent No.1, who was nephew of deceased Rasul Khadir Patel, has, in

collusion, got his name entered in the record of rights and started claiming to be in possession of the suit property and thereby caused obstruction to the Appellants in their possession over the suit property. The Appellants, therefore, were constrained to file the suit for perpetual injunction against the Respondents.

6 Respondent Nos. 1 & 2, the original Defendant Nos. 1 & 2 filed their Say / written statement in the suit and contended that they have become the owners of the suit property, having received the same from Rasul. They had categorically denied that defendant nos. 3 to 6 are the daughters of the deceased Rasul Khadir Patel, the owner of the suit property.

7 Both, the trial court and appellate court held that as the relationship of Respondent Nos.3 to 6, as daughters of Rasul Khadir Patel was disputed by the Respondent Nos.1 and 2, it was incumbent and necessary for the Appellants to prove the same by adducing cogent evidence. However, except for some certificate issued by the Grampanchayat which was produced during the proceedings and which was not tried to be proved, no evidence worth the name was adduced by the Appellant to show that Respondent Nos.3 to 6 were daughters of Rasul Khadir Patel and/ or they were at any time in possession of the suit property. Accordingly, the suit was dismissed and also the appeal, preferred by the Appellants against the said judgment and decree.

8 While challenging these concurrent findings of fact, as recorded by the trial court and appellate court, the submission of the learned counsel for the appellants is that both the courts below have not considered the Grampanchayat certificate produced by the appellants to show that the Respondent Nos. 3 to 6 are the legal heirs of deceased Rasul Khadir Patel. It is urged that the burden was wrongly cast on the Appellants to prove the relationship of Respondent Nos. 3 to 6 and, in fact, the said burden ought to have been put on Respondent Nos. 1 to 2, to disprove said relationship, as they have denied the same.

9 However, in my considered opinion, even accepting that such certificate of Grampanchayat was produced, merely on the basis of the same, it cannot be held as proved that defendant nos. 3 to 6 were daughters of deceased Rasul K. Patel. It is pertinent to note that deceased Rasul has three brothers and other family members. The Appellant has also admitted that he has knowledge that deceased Rasul has three brothers and Abu is one of his brother and that Amir Badshal and Akbar are cousin brothers of deceased Rasul. However, none of them was examined by the Appellants.

10 As a matter of fact material evidence was of the Respondent Nos. 3 to 6, from whom, the appellants had purchased the suit property. However, the Appellants have not examined any of them to prove their relationship with the deceased Rasul K. Patel.

11 It is also pertinent to note that names of Respondent Nos. 3 to 6 were not entered into record of rights at any time and that all along the suit property has been standing in the name of deceased Rasul and thereafter, in the name of Respondent Nos.1 and 2.

12 In such situation, in the absence of any evidence, proving the relationship of Respondent Nos. 3 to 6 with the deceased Rasul K. Patel and particularly their possession over the suit property to show that they have executed some sale deed and on that basis the Appellants had received the possession over the suit property, it has to be concluded that both the courts below, the trial court and appellate court have rightly held that the appellants have failed to prove their case for getting the relief of perpetual injunction.

13 The Second Appeal, therefore, raises no questions of law, far remain any substantial question of law.

14 Hence, the Second Appeal stands dismissed. No order as to costs.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

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