

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

SECOND APPEAL NO. 245 OF 1992

Balu Khandu Pawar

Since deceased Through his LRs. & Ors. ... Appellants

V/s.

Dhondiba Nana Pawar & Ors. ... Respondents

- Mr.V.S. Gokhale for the Appellant.
- Mr.Nitin P. Deshpande for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for Respondent No.1.

2] This Second Appeal is preferred against the judgment and decree passed by the Court of 2nd Additional District Judge, Pune, on 30/09/1991 in Civil Appeal No.1183 of 1988, thereby allowing the said appeal and setting aside the judgment and decree dated 26/10/1988 passed by the Civil Judge, Junior Division, Saswad in Regular Civil Suit No.256 of 1983.

3] The said suit was filed by the Appellant-deceased Balu Khandu Pawar, contending inter-alia that he is in possession of the suit land. On the basis of the sale-deed dated 22/11/1966, he has purchased the said land from Laxman Pawar and Baban Pawar. Since then his name is also entered into record of rights of the said land. He has developed the said land for cultivation and therefore, he is entitled to protect his possession therein. As the Respondents were causing obstruction to his possession, he was constrained to file the suit for injunction.

4] This suit came to be resisted by the Respondents herein contending that the suit land was originally owned by their father Nana Pawar and after the death of Nana Pawar all the five brothers (i.e. Defendant Nos.1 to 3 and Laxman and Baban) were in possession of the suit land. Out of them, only two brothers, namely, Laxman and Baban had no right, or exclusive title to sell the suit land to the Appellant and the Appellant has not received the possession over the suit land. Therefore, neither the sale-deed or his title over the suit land is valid nor he is in actual possession thereof. The Mutation Entry No.206, by which their names came to be recorded in the suit land has been challenged and the proceedings were pending before the Revenue Authorities in which it was held that the Appellant cannot

be said to be in exclusive possession of the suit land.

5] In support of their respective contentions, parties examined themselves and on the basis thereof, the trial Court was pleased to hold that, as the sale-deed of the suit land is standing in the name of the Appellant, hence it was for the Respondents to file a suit for declaration and partition to prove that they are having exclusive right over the suit property. The trial Court therefore decreed the suit and restrained the Respondents from causing obstructions to the possession of the Appellants over the suit land.

6] When this judgment and decree of the trial Court was challenged before the First Appellate Court, First Appellate Court re-appreciated the entire evidence on record, including the evidence relating to the proceedings conducted before the Revenue Authorities and found that the Appellant cannot claim to be in exclusive possession of the suit land, as the land was originally belonging to the father of his vendors and hence, the Respondents who are the brothers of his vendors were also in joint possession thereof and in such situation a suit simpliciter for injunction cannot be tenable at all, without seeking the relief of partition and separate possession.

7] This finding of the Appellate Court is challenged in this

Appeal by learned counsel for the Appellant by submitting that from the date of sale-deed itself in the year 1966, the name of the Appellant was entered in the 7/12 extract of the suit land by Mutation Entry No.2766 on 05/02/1967. Thereafter, though by Mutation Entry No.206 effected on 23/06/1974 the name of the Respondents came to be entered into the records of rights of the suit land, the said entry was only in the ownership column. However, as regards the cultivation column of the 7/12 extract, the name of the Appellant continued to remain. The Mutation Entry No.206 about entering the names of Respondents in the ownership column was alone for consideration before the Revenue Authorities. However, as regards the entry of the Appellant's name in the cultivation column of the suit land, it was not the subject matter of proceedings before the Revenue Authorities and therefore, the Appellate Court has committed an error in relying upon the proceedings before the Revenue Authorities and holding that in the said proceedings the Appellant has failed and therefore, he cannot be entitled to get the relief of injunction.

8] Per contra, learned counsel for the Respondents has supported the judgment of the Appellate Court, by submitting that when admittedly the suit land was the ancestral joint family property of the Appellant's vendors-Laxman and Baban and that of the

Respondents, then it was for the Appellant to prove his exclusive possession over the suit land. However, the findings recorded by the Revenue Authorities which have become final, clearly go to show that the Respondents are also in possession of the suit land and in such situation, the suit simpliciter for injunction came to be rightly dismissed by the Appellate Court, thereby setting aside the judgment and order of the trial Court.

9] The appeal is admitted on following substantial questions of law.

“(a) Whether the lower Appellate Court was right in allowing the appeal only on the basis of entries in the Record of Rights?”

“(b) Whether the Revenue Authorities have jurisdiction to decide the question on title or whether it is for the Civil Court to decide the same?”

10] In the instant case, admittedly, the suit land was belonging to Nana Pawar, father of the Appellants' vendors and the Respondents herein. It is not disputed that it was ancestral joint family property of Laxman and Baban, the predecessors in title of the Appellant and his brothers, namely, the Respondents. There is no evidence to show that the said land was at any time partitioned by metes and bounds. The names of all the five brothers were appearing in the Revenue Record

of the suit land.

11] In such situation, in the absence of any evidence relating to partition between the five brothers, it follows that all the five brothers were in joint possession of the suit land. Though it is the contention of the Appellant that he has received the possession of the suit land from his vendors Laxman and Baban, who were in actual possession thereof, the evidence of Samindrabai the widow Baban Pawar, goes to show that she is not having only evidence to show that there was partition of joint family property amongst five brothers. Therefore, it becomes difficult to accept that the vendors of the the Appellants were in exclusive possession thereof. Even in the proceedings before the Revenue Authorities, which are discussed in detail by the Appellate Court, it was clearly held that all the five brothers are in joint possession thereof. Hence, the case put up by the Appellant that he has received the exclusive possession of the suit land from his vendors cannot be accepted.

12] Merely because along with the Respondents' names, the name of the Appellant also appeared in the cultivation column (as khudd), it cannot be said that the Appellant has received the exclusive possession of the suit land. Sans any evidence proving the partition of the suit land by metes and bounds amongst the five brothers,

therefore the trial Court has committed an error in holding that as the Appellant has received the title over the suit land, it was for the Respondents to file a suit for partition.

13] The law is well settled that it is for the person who has purchased the property belonging to the joint family, to file such suit for partition and separate possession of the share which he has purchased from one of the co-sharers of the said land. The Appellant has, however, not filed suit for partition and separate possession of the land purchased by him from Laxman and Baban. He has filed suit simpliciter for injunction and as he has failed to prove his exclusive possession over the suit land, the Appellate Court has rightly dismissed his suit for injunction. The findings arrived at by the Appellate Court are based on proper appreciation of legal position and both the oral and documentary evidence on record, which is unequivocal. In the Second Appeal therefore in the absence of any substantial question of law raised as such, no interference is warranted therein.

14] The Second Appeal therefore stands dismissed.

15] At this stage, learned counsel for the Appellants requests that ad-interim relief in the nature of interim injunction granted by

this Court at the time of admission of the Appeal on 7/8/1992 be continued for a further period of three months.

16] Learned counsel for the Respondent takes objection thereto and in my considered opinion rightly so. When there is no substantial question of law involved in this Appeal and when this Court has already come to the conclusion that the Appellants have failed to prove on merits that they are in exclusive possession of the suit land, such relief of interim injunction cannot be continued. Therefore, the prayer to that effect is rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]