

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.71 OF 2016

Jayram Umaji Pujare and Ors.	 Appellants
V/s.	
Rajaram Shankar Pujare and Ors.	 Respondents

Mr. Shankar P. Thorat, a/w. Mr. Gurunath B. Walawalkar, for the Appellants.

Mr. Uday P. Warunjikar for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST AUGUST, 2018.

P.C. :

1. Heard Mr. Thorat, learned counsel for the Appellants, and Mr. Warunjikar, learned counsel for the Respondents.

2. This Second Appeal is directed against the 'Judgment and Decree' dated 10th July 2015, passed by the Principal District Judge, Sindhudurg-Oros, in Regular Civil Appeal No.24 of 2007, which was preferred against the 'Judgment and Decree' dated 11th January 2007 passed by the Civil Judge, Junior Division, Deogad, in Regular Civil Suit No.56 of 2004.

3. The said Suit was preferred by the Appellants herein for partition and separate possession of their 1/4th share in the suit properties. It was the contention of the Appellants that they are in possession of the suit lands and their names are also appearing in the 'Record of Rights' of the suit lands. Respondents are having no concern therewith; however, the Respondents are in possession of some portion of the suit lands. Respondents are trying to take over remaining portion of the suit lands and, therefore, it has become necessary to file the Suit for partition and separate possession of the suit lands.

4. This Suit came to be resisted by the Respondents contending *inter alia* that, the Appellants have no concern with the suit lands and, therefore, they are not entitled to get partition and separate possession of their share. It was also denied that, the Appellants are in any way related to the Respondents. The alleged genealogy, as given by the Appellants, was also challenged.

5. In support of their case, Appellants examined themselves. They were also cross-examined. Respondents also led the evidence. On appreciation of their evidence, the Trial Court was pleased to hold that, as in the 'Revenue Record', the names of the Appellants are appearing, the Appellants are having share in the suit lands and, accordingly, decreed the Suit.

6. When the Respondents challenged the said 'Judgment and Decree' before the first Appellate Court, the Appeal was allowed by holding that, the Appellants have failed to prove their title over the suit lands and mere entry of their names in the 'Revenue Record' cannot be the proof of title. Accordingly, the Suit came to be dismissed.

7. While challenging this 'Judgment and Decree' of the first Appellate Court, the submission of learned counsel for the Appellants is that, the Appellants were having '*Phalni Patrak*' to show that they are having concern with the suit lands. It is submitted that, the Appellants are also having the document of 'Redemption of Mortgage', which shows that, they have received the title on the basis of this document of 'Redemption of Mortgage'. The said document was also produced on record, but the first Appellate Court has not accepted the said contention on the count that, it was not proved properly. The submission of learned counsel for the Appellants is that, in respect of genealogy, the 'Judgment and Decree' of the first Appellate Court also suffers, considering the law laid down by the Hon'ble Apex Court in the case of *State of Bihar Vs. Radha Krishna Singh and Others, (1983) 3 SCC 118*, where the various tests are laid down as to how the genealogy is required to be proved.

8. Here in the case, it is submitted that, if the entire evidence adduced by the Appellants and Respondents and the documents, which

Appellants are having in their possession, like the '*Phalani Patrak*', are considered, then it has to be held that, the first Appellate Court has committed an error in dismissing the present Suit. In the alternate, it is submitted that, if the first Appellate Court is of the opinion that the document of 'Redemption of Mortgage' is not proved properly, then the Appellants may be given an opportunity to prove the same by remanding the matter. Moreover, if the remand is granted, then Appellants will also produce on record the '*Phalani Patrak*', which they were having even at the time of giving evidence in the Court.

9. Learned counsel for the Respondents has strongly resisted this submission of remand of the matter and in my considered opinion, rightly so. It is a matter of record that, in the plaint, the Appellants have not stated on the basis of which document of title, they are claiming ownership over the suit lands. In the course of evidence, they had produced the document of 'Redemption of Mortgage'. However, the contents thereof are not proved by examining the attesting witness thereon. Moreover, whatever document was produced being not pleaded, the first Appellate Court has rightly refused to place reliance on the said document. Apart from that, in his cross-examination, Appellant No.2 has categorically admitted that, he is not claiming ownership or share in the suit lands on the basis of document of 'Redemption of Mortgage'. Therefore, if his claim is not based on the 'Deed of Redemption of

Mortgage', then no purpose is going to be served by remanding the matter to prove the 'Deed of Redemption of Mortgage' properly.

10. As regards the document like '*Phalani Patrak*', which Appellants were very much having in their possession, but not produced, even if the matter is remanded for the said purpose, that will not serve the purpose, as the '*Phalani Patrak*' cannot be a document of title. The law is also well settled that, the entries in the 'Revenue Record', even the mutation entries, cannot be treated as the document of title. In such situation, the Trial Court had committed an error in decreeing the Suit, merely on the basis of the entries in the 'Revenue Record'. In order to get the relief of partition, the Appellants were required to prove that they are having any share, right, title in the suit lands, which Appellants have failed to prove. As such, the first Appellate Court has properly appreciated the evidence on record and dismissed the Suit.

11. In view thereof, no substantial question of law is raised in this Second Appeal. The Second Appeal, therefore, being devoid of merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]