

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 143 OF 2014
WITH
CIVIL APPLICATION No. 88 OF 2012

Babu Shiva Mali & Anr. ... Appellants
Vs.
Parsu Lakhu Mali & Anr. ... Respondents

Mr. Bhushan Mandlik i/b S.S. Patwardhan, for the Appellant /
Applicant.

Mr. S. R. Ganbawale i/b Abhijeet M. Adsule, for the Respondent.

CORAM : A. M. DHAVAL, J.
DATE : SEPTEMBER 24, 2018

PC.

1. Heard the learned advocate for the Appellant and
the learned advocate for the respondents.

2. The house property at City Survey No. 772, Gram
Panchayat No. 862 of village Sanglur, Taluka Karvir is the suit
property. Admittedly, it belongs to Lakhu, father of plaintiff
No. 1 Parsu. Plaintiff No. 2 is grand-son of Lakhu. Lakhu was
having one more son Shiva. Defendant No. 1 claimed that he is
son of Shiva and he has $\frac{1}{2}$ share. The plaintiff claimed that

defendant No. 1 is not related to Shiva, brother of plaintiff. The plaintiffs claimed declaration and perpetual injunction. The learned trial court held that plaintiffs were exclusive owners and in possession of suit property and defendant No. 1 failed to prove that he was related to plaintiffs or the common ancestor Lakhu.

3. Pertinently, the defendant Babu has agreed to sell some of the agriculture lands to DW 1 Shivaji Maruti Khade and Dhananjay Khade. The declaration was claimed regarding mutation entries. Civil Court has no jurisdiction to grant declaration, as claimed. The challenge on the ground of bar under S. 11 of the Bombay Revenue Jurisdiction Act was upheld. The learned trial court declined to grant declaration but granted perpetual injunction.

4. In the first appeal, the appellate court held that the plaintiffs were owners and possessors of the suit property and the defendant failed to establish his link with the family of the plaintiffs. Hence, the appeal was dismissed.

5. The whole controversy revolves around the relation of Babu Shiva with Lakhu, who was the owner of property. The defendant claimed that his name was Babu @ Shankar and he is son of Shiva Mali, grand-son of Lakhu Mali. The judgments and arguments disclose that the plaintiff has denied the relationship, whereas the defendant has not entered in the witness box. The power of attorney – Shivaji Maruti Khade was examined, who had no personal knowledge. In the light of these facts, both the courts below recorded concurrent finding that defendant was not related to the plaintiffs. It is a pure question of facts. There are concurrent findings of both the lower courts. Those findings are not shown to be perverse. The defendant has not led any documentary evidence, nor oral evidence to show that he is descendant of Lakhu. Both the courts below have not granted declaration. The challenge to the jurisdiction on the ground of bar of S. 11 of the Bombay Revenue Jurisdiction Act is not material. In the light of these facts, there is no substantial question of law involved.

6. Hence, the appeal deserves to be dismissed in *limine* and is accordingly dismissed with no order as to costs.

7. Pending civil application, filed in this second appeal, does not survive and is accordingly disposed of.

Sd/-
[A. M. DHAVAL, J.]

Vinayak Halemth