

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
SECOND APPEAL NO. 274 OF 2017
WITH
CIVIL APPLICATION NO.594 OF 2017

Nisar Ahmed Usmani Gani] Appellant

Vs.

Abal @ Abdul Hasan Usman Gani] Respondent

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Mr. Sajid Qureshi a/w P. Tiwari i/b Afroz A. Siddqui, for Appellant.
Mr. N.R. Bubna, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 15TH MARCH, 2018.

P.C.

Heard Mr. Siddiqui, learned Counsel for the appellant and Mr. Bubna, learned Counsel for the respondent at length.

2. Mr. Siddiqui mentioned this matter before me as per the administrative order of the Hon'ble Acting Chief Justice as the regular Court is not available today as also the warrant of possession is likely to be executed today i.e on 15th March, 2018.

3. By this Appeal u/s 100 of the Civil Procedure Code, 1908, the appellant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 23rd August, 2016 passed by the District Judge-2, Malegaon in Civil Appeal No.68 of 2009. By that order, the learned District Judge dismissed the appeal filed against the judgment and decree dated 6th August,

2009 passed in Special Civil Suit No.12 of 2006 by the learned Judge, Senior Division, Malegaon. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff and held that the plaintiff is entitled to recover the possession of northern half portion of property admeasuring 10x30 square feet out of 600 square feet of plot No.50 out of City Survey No.1397B and Survey No.10 of Badshakhan Nagar bounded with to the East 20 feet wide road, to the West 15 feet wide road, to the North plot No.49 and to the South remaining half portion of Plot No.50 (for short 'suit premises').

4. In support of this Appeal, Mr. Siddiqui strenuously contended that the Courts below committed serious error in holding that the respondent/plaintiff has established that the suit property is self acquired property and the appellant/defendant failed to prove that he became owner and purchaser of the suit property by virtue of partition. He submitted that the Courts below erred in holding that there was oral partition between the parties. In pursuance thereof, the plaintiff had sold his share. Defendant is in possession of remaining half portion of the suit property. The defendant pays statutory charges in respect of portion which is in his possession. He, therefore, submitted that the Appeal requires consideration as substantial question of law is involved in it.

5. On the other hand, Mr. Bubna supported the impugned order. He submitted that appeal does not involve any question of law much any less substantial question of law.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. A perusal of the record shows that the plaintiff and the defendant are real brothers. The defendant has also not seriously disputed the registered sale deed in favour of

the plaintiff. The defendant contended that the suit property is purchased from the income of the joint family. The Courts below have negated this contention. The Appellate Court in particular observed that at the relevant time, the defendant was of 22 years of age. He did not adduce any evidence to substantiate his source of income for contributing towards purchase of the suit property. The District Court also dealt with plea of the defendant that the suit property was purchased from the joint family property, that too, in the name of the plaintiff being elder brother. The District Court noted that Isak was the eldest among the brothers and naturally if the property is purchased from the income of joint family it has to be purchased in the name of the eldest member. It would have been purchased in the name of Isak and not in the name of the plaintiff. The Courts below after considering the evidence on record have concurrently decreed the suit. No question of law much less substantial question of law is involved in this appeal. Hence, Appeal fails and the same is dismissed.

7. In view of dismissal of main appeal, Civil Application No.594 for stay does not survive and the same is disposed of. Order accordingly.

[R.G. KETKAR, J.]