IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4230 OF 2014

Smt. Shila Appasaheb Chougule and ors. …Petitioners

Versus

Maruti Shivappa Chougule (decd) through Lrs. Smt. Shantabai Maruti Chougule and ors. …Respondents

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Mr.Prashant Suryawanshi i/b. Mr. Gajanan M. Savagave for the petitioners.

Mr. P. M. Arjunwadkar for respondent no.1.

Mrs. M. S. Bane, AGP for the respondent-State.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 19th NOVEMBER 2019.

ORAL ORDER:

Facts:

(a) Family:

One Sattapa was the common ancestor. He had three sons: Shivappa, Mahadev, and Shankar. Mahadev's branch does not play any role in this litigation, so we will focus on the other two branches. Shivappa, Sattappa's eldest son, died leaving behind his son, Maruti.

Maruti, too, is now no more. He is survived by his wife Shantabai.

2. On the other hand, Shankar, Sattappa's youngest son, died, leaving behind his wife Shantabai and son Appasaheb. Appasaheb died in 1992, leaving behind his wife Shila, son Mahesh and Umesh. Thus, there are two Shantabais in the family.

(b) Title and Revenue Proceedings:

3. The petitioners in this writ petition are Shila and her two sons, Mahesh and Umesh. They represent Shankar's branch. They contend that the suit schedule property is a joint family property. In the same vein, they maintain that Shivappa, during his lifetime, acted as the Karta of the joint family, for he was the eldest of Satteppa's three sons. So he had, according to them, the property kept on his name. Though the property had been jointly possessed by all the three branches of Satteppa's family, the revenue records, they stress, reflected only Shivappa's name—and later his son Maruti's name.

(c) The Challenge:

4. Thus contending, the petitioners challenged the title Shivappa claimed under Section 32(g) of the Bombay Tenancy and Agriculture Land Act. The appeal was under Section 74 of the Act before the Sub Divisional Officer (SDO), Ichalkaranji. That was in 2004, though the

proceedings Section 32(g) were concluded in 1982.

5. The SDO, after appreciating the merits, remanded the matter to the Additional Tahsildar, Shirol, that is the primary authority, for fresh adjudication. Then, aggrieved, Maruti, Shivappa's son, filed a revision before the Maharashtra Revenue Tribunal. The Tribunal, through the impugned order, dated 20th November 2013, set aside the SDO's order. In fact, it upheld the initial order under Section 32(g) passed in Shivappa's favour in 1982. Under these circumstances, the petitioners have filed this writ petition.

Submissions:

(a) Petitioners:

6. In the above factual backdrop, Shri Prashant Suryawanshi, i/b. Mr. Gajanan M. Savagave, for the petitioners, submits that the family had a few items of immovable property, which include the property now in dispute. As Shivappa was the eldest of Satteppa's three sons, the property stood in his name, but he was only one of the co-owners. Later, as the property stood in Shivappa's name in the revenue records, taking advantage of that, his son Maruti had his name incorporated after Shivappa's death.

7. At any rate, Shri Suryawanshi contends that the petitioners

filed a Civil Suit RCS No.131 of 1994 and secured a decree for partition. In that partition, the branch of Shankar represented by the petitioners was allotted 1/4th share in the property, and that includes the property now in dispute. So Shri Suryawanshi maintains that the SDO has rightly remanded the matter for the Additional Tahsildar's fresh consideration. But the Tribunal, he stresses, has interfered with that order without any basis. Therefore, he urges this Court to allow this writ petition.

(b) First Respondent:

8. On the other hand, Shri P. M. Arjunwadkar, the learned counsel for the 1st respondent, has initially taken me through genealogy. Then, he pointed out that one Shivaji Dhondji Chavan was the landlord and Shivappa was the cultivating-tenant. It was before 1st April 1957, that is Tiller's Day. When there was a dispute, Shivappa initiated proceedings under Section 32G and secured the order, dated 21st October 1982. Thus, at the sale price fixed by the Revenue Authorities, Shivappa purchased the property and continued to enjoy it as the absolute owner. Later, after his death, his son succeeded.

9. Shri Arjunwadkar has squarely denied the petitioners' allegations that the property belonged or belongs to the joint family

and that it has been enjoyed by all. He does agree that the petitioners filed a civil suit for partition and secured a decree, too. But Shivappa's branch was not a party to that suit. The petitioners, for reasons better known to them, did not add any from Shivappa's branch as the defendants. In other words, neither Maruti nor any of his successors was made a party to the Civil Suit.

10. In this context, Shri Arjunwadkar stresses that the Civil Suit for the partition is confined to Shankar's branch and resulted in a compromise decree, which in fact is collusive. Accordingly, the Maharashtra Revenue Tribunal has considered the issue and rightly declared that Shivappa was the sole owner of the property. Then, after Shivappa, his son and wife succeeded to the property. So Shri Arjunwadkar urges this Court to dismiss the writ petition.

11. Heard Shri Prashant Suryawanshi i/b. Mr. Gajanan M. Savagave for the petitioners, Shri P. M. Arjunwadkar for respondent no.1, and Mrs. M. S. Bane, AGP for the respondent-State.

Discussion:

12. This case has its genesis in the order, dated 21st October 1982. That was passed by the Additional Tahsildar & ALT, Shirol. The dispute was between tenant Shivappa and landlord Shivaji Dhonji

Chavan. As the proceedings were under Section 32G of the Act, the Additional Tahsildar, Shirol, appreciated the dispute and allowed Shivappa to purchase the property at a price fixed by the Revenue Authorities. Thus, Shivappa secured the property under Section 32(h) of the Act. During his lifetime, Shivappa exclusively enjoyed the property, as the revenue record duly reflected. Later, his son Maruti had the revenue record muted and continued to enjoy the property as the owner.

13. Later, in 2004, the petitioners, Shankarappa's daughter-in-law and grandchildren, appealed to the Sub-Divisional Officer, Ichalkaranji, who, through the order, dated 28th December 2005 set aside the primary authorities' order and remanded the matter for fresh adjudication. Then Maruti, Shivappa's son, filed a revision before the Maharashtra Revenue Tribunal. The Tribunal set aside the order and declared that Shivappa's branch alone owns the property and that Shankar's branch has nothing to do with it.

14. In this context, I may note that the Tribunal has dealt with the petitioners' contentions in paragraphs 9 and 10 of the impugned judgment. The discussion is informed by reason. And that needs no interference. First, the adjudication was on a disputed question of fact

—that is, who owned the property. In other words, the auction was whether the property belonged to the joint family or exclusively to Shivappa. The Tribunal, as the final court of fact, has held in favour of Shivappa's branch.

15. Granted, the petitioners filed Regular Civil Suit No.131 of 1994 for the partition of the joint family's property and secured a decree, too. They were declared to hold 1/4th share in the suit properties. And, further, the suit properties included the property now in dispute. I had almost been convinced that the petitioners had their right established until I was told this: Shivappa's branch—that is, his son or the son's successors—was not a party to the suit. It is elementary a decree for partition—as is the case with any decree *in personem* contrasted with a decree *in rem*—does not bind the non-parties. So the petitioners' decree in the partition suit does not bind Shivappa's branch.

16. Indeed, Maruti initially filed Suit No.166/1998 for a declaration that the Judgment and decree in RCS No.131 of 1994 do not bind his branch. It is said to be pending. But the legal position on that count hardly needs any reiteration.

Under these circumstances, I find no reason to interfere with the impugned Judgment of Maharashtra Revenue Tribunal, Pune. So I dismiss the writ petition.

[DAMA SESHADRI NAIDU, J.]