IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.477 OF 2017

Chandrakant B. Jadhav and Ors. … Appellants
Vs
Yashwantrao D. Bhosale
(D.H.)
Shailendra Y. Bhosale and Ors. ... Respondents

…

Mr. V. B.Rajure for the Appellants.
Mr. M.J.Jamdar for the Respondent Nos.1A to 1C, 2 and 3.

CORAM : SANDEEP K. SHINDE J.
DATE : 22 FEBRUARY, 2019

P.C. :

The appellants/plaintiffs had filed Regular Civil Suit No.7 of 2003 against the respondents/defendants for perpetual injunction. Pending suit, plaintiffs had filed an application for temporary injunction. The trial Court declined to grant temporary injunction. The Civil Miscellaneous Appeal was dismissed by the District Court. The Writ Petition preferred was also dismissed by this Court. It is only thereafter plaintiffs amended the suit and prayed for decree of possession of the suit property.

2 The trial Court dismissed the suit against which Regular Civil Appeal No.202 of 2012 was preferred. The appellate Court dismissed the appeal on 25th April, 2016. It is against the decree passed in the aforesaid Regular Civil Appeal, the plaintiffs have preferred this Second Appeal. I have referred the parties as per their status in the trial Court.

3 Heard learned counsel for the parties. Perused the judgments of the Courts below.

4 Both the Courts below concurrently rendered findings of fact that plaintiffs had failed to prove their possession over the suit land as on the date of the suit.

5 It is the plaintiffs' case that predecessors-in-title, of the defendants, Mr. Yashwant D. Bhosale and Jaisingrao D. Bhosale had executed a power of attorney in favour of his father. Jaisingh Bhosale died on 12th July, 1977. On 11th September, 1985 on the

basis of the power of attorney, Baburao executed Kabulayat for the period of 99 years in favour of his son, Chandrakant Baburao Jadhav (Plaintiff No.1) and other two, who are cousins of plaintiff no.1. It appears that the plaintiffs are claiming possession over the suit land since 1972-73, i.e. much before the execution of Kabulayat by Baburao in favour of his son.

6 Plaintiffs have placed on record documentary evidence in the form of tax receipts, kabulayat, Power of Attorney and the rent receipts at Exhibits 186 to 195 to substantiate their possession in the suit land. Besides, plaintiffs have also relied on memorandum of partition deed at Exhibit 326 evidencing partition amongst family members of plaintiffs.

7 Defendants resisted the suit and placed on record documents in the form of orders passed under the Urban Land Ceiling Act and such other documents like revenue extracts, building permissions and so on.

8 It appears from the judgments of the Courts below that tax receipts and rent receipts produced by the appellants before the Trial Court were not free from doubt. More so, the tax receipts produced by the plaintiffs to substantiate their possession in the suit land were not bearing revision survey numbers. It appears the plaintiffs in their cross-examination had admitted that in the suit property there is house of defendants. The appellate Court has considered the effect of orders passed under the ULC Act. Under these orders, the subject land was exempted and the defendants in pursuant thereto, had executed the scheme sanctioned by the authorities under the U.L.C. Evidence on record shows that after obtaining permissions from the authorities under the ULC Act, defendant nos.1 to 3 sold the suit land to defendant nos.4 and 5. Thus, upon appreciating oral and documentary evidence, both the Courts have held that plaintiffs were not in possession of the suit land as on the date of the suit.

9 It may also be stated that father of the plaintiff no.1 executed kabulayat in favour of his son in September, 1985 on the strength of power of attorney executed in his favour by the predecessors in title of the defendant nos.1 to 3. It is not in dispute that one of the executants of the Power of Attorney, Mr. Jaising Rao had died in July, 1977. It is under these circumstances Kabulayat executed by Baburao in favour of his son was not a valid document, in-as-much as one of the executants had died much before 1985.

. Mr. Rajure the learned counsel for the appellants, however, submitted that plaintiffs were in possession of the suit land since 1972-73, i.e., before the execution of Kabulayat. However, evidence on record does not support his contention. It cannot be overlooked that it is only after dismissal of the writ petition by this Court preferred against the refusal of temporary injunction, plaintiffs amended the suit and sought a decree of possession.

10 Thus, taking into consideration facts of the case, in my view, findings recorded by the Courts below are consistent with the

evidence and I do not see any perverseness in such findings. In my view, the appeal, therefore, does not give rise to any substantial question of law. The appeal is, therefore, dismissed.

(SANDEEP K. SHINDE, J.)