

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO.159 OF 2016
WITH
CIVIL APPLICATION NO.1890 OF 2015***

Sunil Baban Lokhande and Ors ... Appellants

Vs

Natha Laxman Lokhande and Ors. ... Respondents

...

Mr. R.S.Apte, Senior Advocate with Mr. Vaibhav Patankar for the Appellants.

Mr. T.D.Deshmukh i/by T. Abhijit for the Respondent No.1.

CORAM : SANDEEP K. SHINDE J.

DATE : 7 FEBRUARY, 2019

P.C. :

Heard learned counsel for the parties.

2 Appellants were defendant nos.2 and 3 in the suit for partition, being Regular Civil Suit No.64 of 1999. Baban, father of the appellants, was defendant no.1 in the said suit. The suit was filed by Natha brother of Baban, for partition of the agricultural land, Survey No.840 and 3 house properties bearing nos.300, 301 and 52.

3 Appellants and their father resisted the suit on the

ground that the suit property is self-acquired property of Baban. In alternative, it was contended that Baban sold the suit land by registered sale deeds to his sons and daughters in July, 1998 and December, 1998 for legal necessity. It was also contended that Dhondiba who represents the branch of, Govind had relinquished his share in the suit land for his consideration of Rs.5,000/-. Thus, multiple defence was raised.

4 The trial Court decreed the suit partly and held that land Gat No.840 and the House No.52 are the ancestral properties and are subject to partition. This decree was challenged in, Civil Appeal No.124 of 2014 by the present appellants and his father Baban, however, appellate Court confirmed the decree passed by the trial Court vide judgment and order dated 24th June, 2015. It is against the decree in the Civil Appeal No.124 of 2014, this appeal is preferred.

5. Learned Counsel appearing for the appellants, submitted that decree drawn by the Courts below is perverse for non-consideration of the vital evidence brought on record by the

defendants. It is submitted that the Courts below did not appreciate evidence of defendant nos.1 and 4 in right perspective which, in fact, has rebutted the presumption of correctness of the revenue entries, on which reliance was placed by the plaintiff. In fact, appeal against the revenue entries was filed in the year 2015, i.e. after the decree. The learned counsel has taken me through the evidence of D.W.1 and D.W.4, in support of his contention.

5 To establish character of the suit property, plaintiff has relied on the revenue entries made since 1949 which shows that, after the death of Muktaji (Common Ancestor), names of Govind and Laxman were recorded in the suit lands. Plaintiff represents the branch of Laxman. Laxman had two sons, Baban and Natha. Evidence on record in the shape of revenue entries show that after the death of Laxman, names of his two sons, Baban and Natha were recorded in the year 1949 vide mutation entry no.2087, whereby names of Baban and Natha were shown having half share each therein. It is fairly admitted by the learned counsel for the appellants that these revenue entries were never challenged by the

appellants until 2015. The revenue record also indicates that after the death of common ancestor, names of Govind and Laxman were recorded as legal heirs of Muktaji. In the case of **Sahibdar Khan and another V/s. Sadloo Khan (dead) by LRs and Others reported in AIR 2003 SC 2076**, Supreme Court has held that, “Long standing entry in Khatauni as occupancy tenant even if it could be construed to be illegal, if not challenged and there being no allegation of it being recorded fraudulently or fictitiously such an entry would have weight for drawing inference in favour of person in whose favour such an entry is recorded.” The Courts below, therefore were right in drawing inference in favour of plaintiffs in whose favour entry is recorded in terms of Section 157 of the Maharashtra Land Revenue Code. In the circumstances, the defendants were required to rebut this presumption. After going through the evidence of D.W.1 and D.W.4, in my view, it does not rebut the presumption of correctness.

6 Yet another defence that was raised by the defendants was that branch of Govind had relinquished their share in the suit

land by accepting Rs.5,000/-. However, this fact was also not proved by the defendants as could be seen from the observations made in paragraph-seventeen in Civil Appeal No.124 of 2014. It takes me to the next submission that the suit land was sold for legal necessity by Baban to his sons by two sale deeds, 9th July, 1998 and 29th December, 1998. It may also be stated that factum of legal necessity has not been proved by the sons of Baban (Appellants herein). This issue was discussed by the appellate Court in detail in paragraph-nineteen of the judgment. It is observed by the appellate Court that except the bare words of defendant nos.2 to 4, there is no evidence on record to show that defendant no.2 (purchaser-appellant) made any enquiry about legal necessity of the family. It is further observed that defendant nos.2 to 4 have not made any enquiry regarding sale of the property for legal necessity. Besides, no independent witness was examined by defendant nos.2 to 4 to show that for legal necessity of family, Baban sold out the suit property to his sons.

7 In my view, Courts below have rendered finding of fact which is consistent with the evidence on record. Thus, for the

reasons aforesaid, in my view, appeal does not give rise to any substantial question of law. The appeal is, accordingly, dismissed. Civil Application is also disposed of.

(SANDEEP K. SHINDE, J.)