

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1277 OF 2019

IN

SECOND APPEAL (STAMP) NO.29371 OF 2018

WITH

CIVIL APPLICATION NO.1278 OF 2019

IN

SECOND APPEAL (STAMP) NO.29371 OF 2018

Shri. Kiran Ramchandra Gaikwad

...Appellant

vs.

Payal Manoj Nagare Through

Legal Guardian Sunderrao Vishnupant Kulthe

...Respondents

....

Mr. Arun H. Palekar, for the Appellant/Applicant.

Mr. D.M. Gupte, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE: 19 NOVEMBER 2019

P.C.:

. Heard learned Counsel for the parties.

2. This second appeal challenges a judgment and order passed by the lower appellate court in a civil appeal. That civil appeal arose from a partial decree granted by the trial court in favour of Respondent No.1 herein (original plaintiff). The plaintiff's suit was for partition and

separate possession of her share in the property. The trial court rejected the relief of partition or separate possession. It, however, declared that the plaintiff was entitled to stay in the suit property as a co-occupier. Defendant no.1 was permanently restrained from creating any third party rights in the suit property. This order was carried in appeal by the plaintiff, since she was aggrieved by refusal of the trial court to partition the suit property, though her right to the suit property was acknowledged by it, such refusal being on the ground that the title to the property belonged to the Government and, hence, partition was not permissible. The lower appellate court, in its impugned order, reversed this conclusion. The appeal court noted that the predecessor of the plaintiff, Ramchandra, and his wife Shakuntala were flood affected persons and allottees of the suit property and its occupancy rights as such affected persons; their names were, accordingly, mutated in revenue record of the suit property. The court held that though title of the land was with the State of Maharashtra, the occupancy rights vested in the concerned allottees. The court noted that the suit property, which was transferable within the meaning of Section 6 of the Transfer of Property Act, devolved upon the husband of the plaintiff and defendant no.1 - Prakash. As far as the present Appellant, namely, defendant no.3, is concerned, the court noted that he was a mere licensee of a portion of the suit property and could not resist the partition of the suit property. Thus, upon re-appreciation of oral and documentary evidence in its true perspective, the court came to the conclusion that the trial court had wrongly negated the plaintiff's claim of partition, as the property was partible and had devolved upon the plaintiffs and defendant no.1 - Prakash. It, accordingly, decreed the suit by ordering physical partition

of the suit property.

3. There is no infirmity in the impugned order of the lower appellate court. Defendant No.3 was held not to have any locus to resist partition of the suit property even by the trial court. The trial court found that defendant no.3 was a mere lessee from defendant no.1. There is no substantial question of law in the present second appeal to be raised at the instance of defendant no.3. The impugned order of the lower appellate court is in accordance with law. It proceeds on the basis that the suit property, which was transferable and heritable, devolved upon the predecessor, i.e. the husband and father, respectively, of plaintiff nos. 1 and 2, on the one hand and defendant no.1 on the other hand (Respondent No.2 to the present second appeal); the property, being held under an occupancy right, was partible; and, accordingly, there was no impediment for its partition between the plaintiffs on the one hand and defendant no.1 on the other. So far as defendant no.3 is concerned, neither of the two courts below accepted his locus to resist partition of the suit property. The impugned order is clearly supported by evidence; it takes into account all germane and material facts and circumstances of the case; and it does not base itself on any irrelevant or non-germane fact or circumstance. The order is within jurisdiction and does not suffer from any perversity and no substantial question of law arises from the order for consideration of this Court. The second appeal is, accordingly, dismissed.

4. Learned Counsel for the Appellant applies for stay of this order. The application is refused.

5. In view of the disposal of the second appeal, the civil applications taken out therein do not survive and is disposed of.

Smita
Gonsalves

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(S.C.GUPTE, J.)