

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

**FIRST APPEAL NO. 338 OF 2018
WITH
CIVIL APPLICATION NO. 956 of 2018
IN
FIRST APPEAL NO. 338 OF 2018**

1. Shri Bhikal Devji Dhinda
Age 70 years, Occ: Agriculturist
2. Shri Lakhma Devji Dhinda,
Age 65 years, Occ: Agriculturist
3. Shri Motai wd/o. Baban Devji Dhinda,
Age 65 years, Occ: Agriculturist
4. Shri Magan Baban Dhinda,
Age 40 years, Occ : Agriculturist
5. Shri Gulab Baban Dhinda,
Age 37 years, Occ: Agriculturist
6. Smt. Savita Baban Dhinda,
Age 5 years, Occ: Agriculturist
7. Somli wd/o. Dhakal Devji Dhinda,
Age 63 years, Occ: Agriculturist
8. Shri Rajesh Dhakal Dhinda,
Age 40 years, Occ: Agriculturist
9. Shri Jitendra Dhakal Dhinda,
Age 38 years, Occ: Agriculturist
10. Shri Dharmesh Dhakal Dhinda,
Age 36 years, Occ: Agriculturist
11. Sangeeta Dhakal Dhinda,
Age 29 years, Occ: Agriculturist

All above res. At Patel Faliya,
Chinchpada, Dadra & Nagar Haveli

..Appellants

v/s.

- 1) Navjibhai Babibhai Dhinda
Age 45 years, Occ: Agriculturist
- 2) Damjibhai Babibhai Dhinda
Age 43 years, Occ: Agriculturist
- 3) Manchhiben Babibhai Dhinda
Age 41 years, Occ: Agriculturist
- 4) Chhaniben Babibhai Dhinda
Age 35 years, Occ: Agriculturist
- 5) Ladkuben Babibhai Dhinda
Age 33 years, Occ: Agriculturist
- 6) Rameshbhai Babibhai Dhinda
Age 31 years, Occ: Agriculturist
- 7) Barjulbhai Babibhai Dhinda
Age 30 years, Occ: Agriculturist
(All R/at : Patel Faliya, Chinchpada,
Dadra and Nagar Haveli)

.....Respondents

Mr. Girish Agrawal a/w. Sachin Padaye for the Appellant/Applicant.
None for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th and 28th AUGUST, 2019.

ORAL JUDGMENT :-

1. By Order dated 16th April, 2018 the parties were put to notice that endeavor would be made to dispose of the appeal finally at the

stage of admission.

2. Despite due service, the respondents have not appeared before the Court. The learned Counsel for the appellant states that the Defendant had also not contested the suit before the trial Court.

3. The Appellants were the plaintiffs and the Respondents were the Defendants in the Special Civil Suit No. 54 of 2012, filed before the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa. For convenience, the parties shall be referred to as Plaintiffs and Defendants respectively.

4. The appeal is directed against the judgment and order dated 30.08.2017, whereby the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa has dismissed the Special Civil Suit No. 54 of 2012.

5. It is the case of the plaintiff that the suit property bearing Khata No. 42, surveyed under Survey No.8, Sub Division 1, 20, 7, 22 53 and 10/1 of Village Chinchpada was granted to Babi Devji Dhinda, Bhikal Devji Dhinda, Baban Devji Dhinda, Dhakal Devji Dhinda and Lakhama

Devji Dhinda. Order No. LRO-II/Chinchpada/37/50/57/74 dated 13.2.1976 in terms of Section 4 of Dadra and Nagar Haveli land Reforms Regulation , 1971. It is the case of the plaintiff that the allottees had equal share i.e. 1/5th share in the suit property. The plaintiff nos.1 and 2 and the successors of of Baban Devji Dhinda and Bhakal Devji Dhinda are together entitled for 4/5th share , whereas the defendants who are the legal representatives /successors of Babi @ Babibhai Devji Dhinda are entitled for 1/5th share in the suit property.

6. The plaintiffs claim that they had requested the defendants for amicable partition of the suit property as per their respective shares. The defendants did not co-operate for such amicable partition, which necessitated the plaintiff to issue legal notice dated 19.9.2012. The defendants refused to accept the said notice. The plaintiffs therefore filed a suit for the following reliefs.

“ (a) That the Honourable Court may please to pass an order and decree against the defendant that the plaintiffs are entitled to have the declaration that plaintiffs are entitled for the lawful partition and separate possession of the suit property being 4/5 share of the plaintiffs and 1/5 share of the defendants in equal ratio, in the interest of justice.

(b) The Honourable Court may please to pass the order and decree of permanent injunction that the defendants shall not unnecessarily cause hurdles in the peaceful occupation and cultivation of the plaintiff's property by creating dispute regarding shares of each co-owner in the interest of justice."

7. The defendants did not appear despite due service of summons. Hence the suit was ordered to proceed ex-parte against the defendants. The plaintiff no.1 examined himself and produced relevant documents in support of their case. The learned trial Judge after considering the evidence adduced by the plaintiff held that the pleadings as regards ownership and genealogy are vague and cryptic. The learned trial Judge has also held that the plaintiffs had only sought a declaratory relief that they are entitled for partition and separate possession. The plaintiff had not prayed for partition and separate possession of the suit property. The learned Judge held that in the absence of prayer for partition, and separate possession, the declaratory relief cannot be granted. The learned Judge has further held that the plaintiff had not proved that the defendants had tried to interfere with their possession in respect of the suit property and hence the plaintiffs were not entitled for relief of permanent injunction. Based on these findings the learned

Judge dismissed the suit. Being aggrieved by the dismissal of the suit, the plaintiffs have filed this appeal.

8. I have perused the records and considered the submissions advanced by Shri Agrawal, the learned Counsel for the appellant-plaintiff. The evidence of PW1 Bhikal Devji Dhinda and the Order No. LRO-II/Chinchpada/37/50/57/74 dated 13.2.1976 at Exhibit 19 and 20 reveals that the suit property was allotted to the five brothers namely Babi Devji Dhinda, Bhikal Devji Dhinda, Baban Devji Dhinda, Dhakal Devji Dhinda and Lakhama Devji Dhinda, in terms of Section 4 of the Dadra and Nagar Haveli Land Reforms Regulation, 1971 is on record at Exhibit 19 and 20.

9. The evidence of PW1 reveals that the suit property which is the subject matter of the grant at Exhibit 19 and 20 is surveyed under Survey No.8/1. 20, 7, 22, 53 and 10/1 of Village Chinchpada, Dadra and Nagar Haveli. The plaintiffs have placed on record 7 x 12 extracts which are at Exhibit 21, 22, 23, 24, 25 and 26. The plaintiff has also placed on record Mutation Entry No.223 at Exhibit 27. A perusal of the said survey record clearly indicates that the suit property is recorded in the Survey Records in the name of the said five brothers

namely Babi Devji Dhinda, Bhikal Devji Dhinda, Baban Devji Dhinda, Dhakal Devji Dhinda and Lakhama Devji Dhinda. The grant at Exhibit 19 and 20 and the Survey Records at Exhibit 21 to 27 therefore sufficiently proves the case of the plaintiff that the property was granted in favour of Babi Devji Dhinda, Bhikal Devji Dhinda, Baban Devji Dhinda, Dhakal Devji Dhinda and Lakhama Devji Dhinda and that they are in possession of the same.

10. The pleadings vis-a-vis the evidence of PW1 clearly indicates that the defendants are the legal heirs of deceased Babi Devji Dhinda. The learned Counsel for the appellant states that the plaintiff no.3 is the widow and the plaintiff nos.4 to 6 are the children of Baban Devji Dhinda, whereas the plaintiff no.7 is the widow and the plaintiff nos.8 to 11 are the children of Dhakal Devji Dhinda. The plaintiff nos.1 and 2 being the original allottees and the plaintiff nos.3 to 11 being the legal representatives of Baban Devji Dhinda and Dhakal Devji Dhinda are therefore entitled for $\frac{4}{5}$ th share of the suit property, whereas the defendant no.1 to 7 being the heirs of Babi Devji Dhinda are entitled for $\frac{1}{5}$ th share in the suit property.

11. PW1 has deposed that they had approached the defendants with

a request of amicable partition of the suit property. The defendants did not co-operate and further started obstructing peaceful possession occupation and cultivation by the plaintiffs in the suit property. The plaintiffs claim that the defendants were trying to grab more share by depriving the other co-owners of their legitimate right in the suit property. The plaintiff therefore issued a legal notice dated 19.9.2012 (Exhibit 29) calling upon the defendants to partition the suit property by providing 1/5th share to each of the brother/grant/original allottee or their legal representative. The plaintiffs had stated that the defendants had refused to accept the said notice. The plaintiffs have placed on record copy of the notice, undelivered envelopes of the said notice along with postal slips which are at Exhibit 31 to 33. It was in these circumstances, that the plaintiffs filed a suit for declaration and permanent injunction.

12. It is to be noted that in the legal notice issued to the defendants, the plaintiff had specifically stated that the defendants have 1/5th share in the suit property and that the plaintiffs have 4/5th share, and had called upon the defendants to partition the property in the said ratio. The pleadings read as whole, also indicate that the plaintiffs were not only claiming 4/5th share in the suit property, but were in fact

seeking partition and separate possession of the suit property. However, in the prayer clause the plaintiffs have merely sought declaration that they are entitled for lawful partition and separate possession without actual seeking partition and separate possession in the suit property. The learned Counsel for the appellant relying upon the decisions of the Apex Court in *Rupadhar Pujari vs. Gangadhar Batra 2004(2) Apex Court Judgments 668 (S.C)*, *Narain Prasad Agarwal vs. State of MP 2008 ALL SCR 35*, and the decision of this Court in *Damodar Namdeo Sase vs. Namdeo Baburao Sase 2008 (5) All MR 56*, contends that in mofusil area the pleadings are generally loosely worded and such pleadings must be construed liberally, as a whole. He submits that the Trial Courts have denied the relief simply because the relief clause is not happily worded.

13. In *Rupadhar Pujari (supra)*, while allowing the Election Petition, the learned Munsif had disqualified the respondent from contesting the election and had declared the Petitioner, being the single candidate as duly elected to the post of Sarpanch. In the Writ Petition filed by the Respondent, the High Court upholding the finding that the respondent was disqualified from being elected. However, the High Court held that the relief clause in the election petition, the petitioner had not sought

for any relief to declare him as elected. Hence, instead of declaration that the petitioner was duly elected, directed the authorities under the law to held re-election. The Apex Court observed that the prayer clause in the election petition was not happily worded. The Apex Court however held that in election petitions that the procedural laws relating to elections and election petitions cannot be interpreted to too much of rigidity. The Apex Court referred to the decision of the Constitution Bench in *Sardar Amarjit Singh Kalra (dead) by Lrs. and ors. v/s. Pramod Gupta (Smt.) (dead) by Lrs. and ors. (2003) 3 SCC 272*, and held that the laws of procedure are meant to regulate effectively, assist and aid the object doing substantive and real justice. Procedural laws must be liberally construed to really serve as handmaid of justice, make them workable and advance the ends of justice. Technical objections which tend to be stumbling blocks of defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of the law inevitably necessitates it. The Apex Court further observed that ordinarily a plaintiff or a petitioner should not be denied such relief to which he found entitled on the facts established, simply because the relief clause is not very happily worded.

14. Considering the aforestated principles, in my considered view, the learned trial Judge was not justified in declining the relief solely on the ground that the prayer clause was not happily worded, when the pleadings read as a whole, as well as the notice and the evidence on record clearly indicate that the plaintiff was in fact seeking relief of partition and separate possession.

15. The plaintiff had also filed his affidavit of evidence wherein he had deposed that the defendants are trying to grab more share than that they are entitled to, and that they are trying to deprive the other co-owners of their legitimate rights. It is further stated that the defendants had threatened to cause hurdle in the peaceful occupation and cultivation of the plaintiffs by creating disputes for the share of each co-owner. In the light of these statements which have gone unchallenged, the trial court was not justified in observing that the plaintiffs have failed to prove that the defendant had interfered or disturbed their possession and consequently the trial court was not justified in declining relief of permanent injunction.

16. Under the circumstances, and in view of the discussion supra, the plaintiffs are entitled for relief of partition and separate possession.

Hence the following order :-

- (a) The impugned judgment and decree is hereby set-aside.
- (b) The suit is decreed.
- (c) It is held that the plaintiffs have 4/5th share in the suit property and that the defendants who are the legal representatives of Baban and Babi Devji Dhinda are entitled for 1/5th share in the suit property.
- (d) The plaintiffs are entitled for partition and separate possession of their 4/5th share in the suit property.
- (e) Decree be drawn accordingly.
- (f) Decree precept be sent to Collector, Dadra and Nagar Haveli, Silvassa who shall himself or through any other Gazetted officer shall effect partition of the land and put the plaintiffs in possession of the 4/5th share in the suit property.

17. Civil Application does not survive and stands disposed of.

Prasanna
P.
Salgaonkar

Digitally signed
by Prasanna P.
Salgaonkar
Date:
2019.12.12
15:37:29
+0530

(SMT. ANUJA PRABHUDESSAI, J.)