

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 801 OF 2015
WITH
CIVIL APPLICATION NO. 1687 OF 2015

Shri Sopan Laxman Salunkhe & ors. ..Appellants.

v/s.

Shri Sahebrao Laxman Salunkhe & ors. ..Respondents.

Mr. Dilip Bodake, advocate for appellants.

Mr. Girish Agrawal, advocate for respondent No. 1.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 18, 2020.

P. C. :

1 The appellants herein impugn the Judgment and Order dated 20/1/2015 passed by Ad-hoc District Judge. Satara in Regular Civil Appeal No. 313 of 2010, thereby confirming the Judgment and Order dated 8/10/2010 passed by Joint Civil Judge, Senior Division, Satara in Regular Civil Suit No. 452 of 1997.

2 Factual matrix of the case is that-

(i) That, the respondent No. 1 herein had filed Civil Suit No. 279 of 1985 seeking relief of perpetual injunction against the

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plaintiff No. 1 i.e. appellant No. 1 Sopan Salunkhe. The suit was dismissed.

(ii) Being aggrieved by the said Judgment and Order, the plaintiff therein had filed Regular Civil Appeal No. 312 of 1988. The Appellate Court was pleased to allow the appeal.

(iii) Being aggrieved by the said, the appellants herein had preferred Second Appeal No. 1098 of 1996 and the same was dismissed.

(iv) Thereafter, the appellant herein had filed Regular Civil Suit No. 452 of 1997 seeking the relief of partition of the suit properties described in Schedule-A.

3 It was the contention of the respondents that the father of the plaintiffs and the respondents expired on 15/10/1976 and on 30th October, 1976 Watap Yadi was drawn between the plaintiff No. 1 and the defendants, wherein all four brothers were put into possession of respective properties and they were cultivating the same. In respect of house property, tax register of gram panchayat would show that the mutation of names of each brother had been effected and separate numbers have been allotted to all properties

belonging to four brothers. Mutation entries were not carried in respect of agricultural lands, more particularly, because the plaintiff Nos. 1 and 2 were serving in the army and were not available for enquiry and assignment.

4 According to the plaintiffs, signature of the plaintiff No. 1 was obtained on blank paper only for carrying out mutation entry after the demise of their father. The same was misused and Watap Yadi has been drawn. It is undisputed that the defendant No. 1 was put into possession of the agricultural land, which was subject matter of Regular Civil Suit No. 279/1985.

5 The issue that fall for determination are as follows :

(i) Whether Exh. 38 Watap Yadi was a memorandum of partition or partition deed itself and therefore, whether registration was mandatory as contemplated under section under section 17 of the Registration Act.

6 It is a matter of record that the contents of the document at Exh. 138, which was titled as “Watap Patra” was considered by

the Court of the first instance. The contents were as follows that- “in acquiescence of all the parties concerned, the said document is being drawn by consent of all the brothers and the same would be binding upon them. That they had no grievance about the said watap patra and that it was not open for them to challenge even in future.”

7 It is pertinent to note that the contention, that the blank paper was signed was never raised in Civil Regular Suit No. 279 of 1985. That evidence was recorded in the said suit and the suit was finally decreed in favour of the plaintiff i.e. the present respondent No. 1. The Appellate Court allowed Regular Civil Appeal No. 312 of 1988 and the Second Appeal challenging the same was dismissed.

8 It is contended that the plaintiff No. 2 was the power of attorney holder of the plaintiff Nos. 3 and 4 and the plaintiff No. 2 was also not a signatory to the said agreement. The fact that the said issue was never raised from 1976 to 1995 would go to the core of the matter. It has to be appreciated that said arrangement was by acquiescence and the contents of the Watap Patra for almost more than a decade.

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9 It is the contention of the appellant that the said document is not registered document as per section 17 of the Registration Act. Section 17(c)(d) of the Act reads as follows :

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

10 It is pertinent to note that in the present case, there was no question of consideration involved in the Watap Patra, nor there was any declaration, assignment, alteration or extension of any such rights or title or interest and therefore, it was not necessary to register the said document. Even otherwise, learned Counsel for the appellant has submitted that assuming for the sake of argument that it is a Watap Patra, it would only be memorandum of partition. The issue is answered accordingly.

11 The contention raised by the plaintiff right from the first Court till the institution of the second appeal are inherently inconsistent and contrary to each other. On one hand, it is contended that the Watap Patra cannot be relied upon, since it is not a registered document and on second hand, it is stated that it is a family arrangement and therefore, not open for registration. In both the eventuality, question is about intention of the parties at the time of drawing the said document. The said ground is being raised for the first time in the year 1995 and was never raised prior to it in Regular Civil Suit No. 279 of 1985.

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12 Ramchandra was one of the defendant and in his substantive evidence, he had admitted that there was partition among five brothers however, he had not agreed with the said partition. He had admitted his thumb impression on the Watap Yadi. In the said suit, the plaintiffs and defendants had specifically admitted their possession in respect of field as per partition. Learned Civil Judge Sr. Division has specifically observed about the proceedings under Appeal No. 230 of 1998, which was decided by the Revenue Commissioner, Pune, in which plaintiff No. 2 Jagannath had admitted fact of partition in between co-parceners and had requested to delete Gat No. 892 from acquisition by the government. Moreover, defendant Ramchandra had mortgaged their properties and obtained loan for the development of their agricultural land. In that respect, it was contention of the present plaintiffs that he had obtained loan as coparcener of joint family property upon drawing memorandum of partition/watap yadi. There was no question of any one acting as a 'karta' of joint family. Defendants had examined witness Anandrao Nalavade, who had proved in the substantive evidence that the partition had been

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effected between plaintiffs and defendants long back and that he (Anandrao) was cultivating the plaintiffs' land out of Gat No. 892 belonging to Sopan.

13 The intention of the parties has to be gathered from the fact that from 1976 till 1995, there was no complaint that fraud had been played upon them by obtaining signatures on blank stamp papers.

14 It is pertinent to note that as a matter of fact, according to defendants, Thakubai and Babai had orally relinquished their share in favour of the plaintiffs and defendants long ago and in all probabilities, it was in these circumstances, they had not signed Watap Patra. It is also brought to the notice of the Court that the daughter of plaintiff No. 2 Jagannath, was married to the son of plaintiff no. 4 Babai and therefore, Babai was in favour of plaintiff.

15 Learned Counsel for the respondent No. 1, at this stage, has placed reliance upon the Writ Petition filed by present plaintiff, which was registered as Writ Petition No. 7703 of 2003 and which is

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pending before this Court. It was contended in the said Writ Petition that the land acquisition officer had issued notice to acquire petitioner's land bearing No. 892 admeasuring 27 R for rehabilitation of the project affected persons. It is specifically contended that after demise of their father after 1976, partition had taken place between them on Rs. 3 stamp paper by preparing Memorandum of Partition and that there is dispute in respect of Gat No. 679. In fact, on the date of filing of the writ petition, said dispute was adjudicated and it was held that the respondent is in possession of the said suit property. It is specifically contended that by virtue of partition, slab limit of the petitioners therein who happen to be the appellant herein does not exceed the slab limit. It is reiterated in several paragraphs that the partition is done by reducing into writing on 3 Rupees stamp papers and it has not been effected in the record of right.

16 Admissions need not be proved as per section 58 of Indian Evidence Act. Learned Counsel for the respondent has placed reliance upon the Judgments of the Apex Court (I) **Kale & ors. v/s. Deputy Director of Consolidation (AIR 1976 SC 807)**, (II) **P.N. Talwalkar**

Wankude v/s. C.S. Wankudre (AIR 2002 Bombay 129), (III) Atmaram s/o. Ganu Nargale v/s. Baliram s/o. Ganu Nargale (2010(2) All MR 675). The ratio therein is not applicable to the facts of this case.

17 In the case of **Manikchand Hiralal Nahar & ors. v/s. State of Maharashtra & ors.** reported in 2018(1) Mh. L.J. page 379, this Court has held as follows : .

“8. Based on the conclusions of this Court in the case of Arvind Deshpande (supra), the competent authority issued a circular dated 10/05/2006 clearly indicating that when undivided Hindu family members desire to partition the land and seek mutation entries on the basis of such partition deed, the Revenue Authorities shall not insist on the partition deed being registered as a pre-condition for considering it as a foundation for effecting mutation entries. By the said circular, clauses 1 and 3 of the earlier circular dated 26/05/1995 were set aside.”

18 Hence, it can be held that the said document need not be registered and was not registrable document as per section 17 of the Registration Act. The Appellate Court has taken into consideration

the contention raised by the parties to the suit and the appeal at various stages. There are inconsistent contentions on oath and therefore, the Judgment of Appellate Court does not call for any intervention. The contention of the learned Counsel for the appellant contends that it was not binding upon him to seek declaration that the said watap patra is not binding upon him. Said submission cannot be countenance in view of the evidence led by the plaintiffs, at different stages in different proceedings, Hence, Second Appeal being sans merits deserves to be dismissed. The Second Appeal is dismissed.

19 In view of dismissal of the Second Appeal, nothing survives in Civil Application. The same is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]