

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**948 SECOND APPEAL NO.62 OF 2018
WITH CA/4110/2018 IN SA/62/2018
WITH CA/1492/2018 IN SA/62/2018**

Pratap Amrut Patil (Died)
Through L.Rs. -

1 Dewkabai Pratap Patil,
Age 62 yrs., Occ. Household,

2 Ravindra Pratap Patil,
Age 44 yrs., Occ. Agri.,

Both are r/o K.C. Park Kanalda Naka,
Jalgaon, Dist. Jalgaon.

3 Vandana Bai Lotan Patil,
Age 40 yrs., Occ. Household,
R/o Bilwadi, Tq. & Dist. Jalgaon.

4 Kailash Pratap Patil,
Age 37 yrs., Occ. Agri.,
R/o Bhadli (Kh), Tq. & Dist. Jalgaon.

... **Appellants**

... **Versus** ...

1 Bhagwat Baburao Patil,
Age 59 yrs., Occ. Labour,

2 Ramchandra Baburao Patil,
Age 56 yrs., Occ. Labour,

3 Yograj Baburao Patil,
Age 53 yrs., Occ. Labour,

4 Laxman Baburao Patil,
Age 50 yrs., Occ. Labour,

All are r/o Bhadli (Kh),
Tq. & Dist. Jalgaon.

... **Respondents**

...

Mr. P.P. Dhorde, Advocate for appellants

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th FEBRUARY, 2021.

ORDER :

1 Present Second Appeal has been filed by original plaintiff to challenge the concurrent Judgment and Decree passed in Regular Civil Appeal No.78/2018 by learned Principal District Judge, Jalgaon on 16.11.2016, thereby dismissing his appeal and confirming the dismissal of his suit i.e. Regular Civil Suit No.461/2000 by learned 2nd Joint Civil Judge Junior Division, Jalgaon on 17.12.2007.

2 Heard learned Advocate for the appellants. The original plaintiff has expired during the pendency of the present appeal, and therefore, his legal representatives have been brought on record. Unless the appellant showed that substantial questions of law are arising in this case, it is not even necessary to issue notice to the defendants/respondents.

3 The learned Advocate appearing for the appellants has vehemently submitted that both the Courts below have not considered the point involved in the case properly by appreciating the evidence that was led by the original plaintiff. A contrary finding was arrived at between the learned Lower Court and the First Appellate Court on the point of *res-judicata*. The learned Lower Court has held that in view of the earlier suit i.e. Regular Civil Suit No.2/1994 filed by the plaintiff on the same ground, dismissal thereof would amount to *res-judicata*, however, the learned First Appellate Court held that since the evidence to that effect i.e. the pleadings of the parties and the Judgments on the earlier round of litigation were not produced on record, the present suit was not barred by the principle of *res-judicata*. The said point was decided properly, however, both the Courts erred in holding that the appellant has failed to prove exclusive ownership and possession over the suit lands. In fact, one Goba was the original owner, who had four sons and four daughters. There was a partition between them, which was of course, oral partition and the suit properties i.e. land Gat No.146/A (105/2A), Gat No.146/A (105/3A) and Gat No.28 (134/2E/2K/2G/2A.2/1) situated at Bhadli (Kh). The Mutation Entries are appearing since 1994 and nobody has challenged those entries. Under such circumstance, when there is proof of partition by way of revenue record, it ought to have been held that the original plaintiff is the exclusive owner of

the suit property, and therefore, substantial question of law is arising in this case. It was also further submitted that Civil Application No.4110 of 2018 is filed for allowing the appellant to produce additional documents. If the additional documents are allowed to produce, then it will change the decision of both the Courts below. He, therefore, prayed for admitting the Second Appeal and issuing notice to the respondents.

4 At the outset, as regards the Civil Application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 is concerned, perusal of the entire application would show that there is absolutely no mention, as to why these documents could not be filed before the learned Lower Court when the suit was pending. As regards the Mutation Entry dated 01.01.2016 is concerned, though it is subsequent, it is in respect of subsequent events. Unless it is shown that it has connection with the suit property, it cannot be allowed. Further, even the Mutation Entry, that was taken in 1996 is tried to be tendered now, which could have been definitely produced before the learned Trial Court. In absence of any reason for not producing those documents, which were available with the revenue authorities prior to 17.12.2007 and any such attempt to file it before the First Appellate Court till the appeal came to be decided on 16.11.2016, that application cannot be taken into consideration. In absence of any reason, the powers of the Court

under Order 41 Rule 27 of the Code of Civil Procedure cannot be invoked to allow the appellants to produce those documents on record.

5 As regards the issue in respect of *res-judicata* is concerned, though the learned Trial Judge had held that the suit is barred by principle of *res-judicata*, that findings has been reversed by the First Appellate Court and it is answered in favour of present appellants and further the respondents have not come before this Court to challenge the said findings. Therefore, that point cannot give rise to a substantial question of law. Even if for the sake of argument is it accepted that such point was raised by the defendants before the Trial Court, but it appears that the learned Trial Court went on to discuss the point only on the basis of the admissions given by the plaintiff. No supporting documents were produced by the defendants to prove or support their contention that the suit is barred by principle of *res-judicata*. The learned Principal District Judge has considered all the aspects involved in the point and has come to the correct conclusion that since the basic document to arrive at a conclusion that the suit is barred by the principle of *res-judicata*, it cannot be held that the suit is barred. At the costs of repetition, it can be said that in order to prove that the suit is barred by the principle of *res-judicata*, it will have to be proved by filing necessary documents i.e. pleadings, written statement, Judgment. The concerned Court

cannot come to the said conclusion. It will have to be shown that the parties were litigating under the same title in the earlier suit. The property/subject-matter involved in the suit was the same.

6 Now, as regards the exclusive ownership claimed by the plaintiff is concerned, it is his case that an oral partition had taken place somewhere in 1952 and his father got the suit property in the said partition. He has not examined anybody, who could have been present at the time when the said oral partition had been taken place. Further, he has not given the details, as to how many properties were there with the ancestor and how the partition was effected in respect of those properties. No doubt, there appears to be an admission by defendant No.1 that during the life time of his father oral partition took place between the four brothers, but then he says that nobody had given application to Talathi to get the names mutated as per the partition. Further, it appears that he has also stated that he possessed land Gat No.146/A and 146/B, plaintiff possess Gat No.245. Further, he says that there is oral partition in respect of Gat No.146/A, 146/B and 288. Thereafter, he says that there was a family arrangements. Defendants examined the neighbouring land holders, who have specifically stated that they had never seen the appellant, plaintiff in land Gat No.146/A and 146/B. A possibility by preponderance of probability created that there might be a

family arrangement, but both the Courts below have concurrently held that there is no reliable evidence to support the fact pleaded by the plaintiff that there was a partition and the suit lands were allotted to his father.

7 It appears that the plaintiff was very much relying upon the 7/12 extracts but the legal position as was pronounced in **Gurunath Manohar Pawaskar and others vs. Nagesh Siddappa Navalgund and others, AIR 2008 S.C. 901**, wherein the Hon'ble Apex Court has held -

“A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Indian Evidence Act.”

The principle enshrined in Section 110 of the Indian Evidence Act is based on public policy. However, the evidence, that is, adduced on record shows that the plaintiff has failed to prove his possession also. Plaintiff wants to rely on the revenue records to claim his exclusive title. In this case also reliance can be placed on the decision in **Corporation of the City of Bangalore vs. M. Papaiah and another, (1989) 3 SCC 612**, wherein it is held that -

“It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law.”

8 Therefore, on the facts of the case, when both the Courts below have given concurrent findings, it cannot be gone into by this Court under Section 100 of the Code of Civil Procedure, which requires pure question of law. Therefore, no substantial question of law is arising in this case, requiring admission of the Second Appeal. It stands dismissed. Both the Civil Applications are disposed of.

(Smt. Vibha Kankanwadi, J.)

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