

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.590 OF 2012

MUKTABAI W/O MANIKRAO VEER AND ORS
VERSUS
SHRIMANT @ SHRIRAM VITHALRAO VEER

.....
Mr. S. S. Deshmukh, Advocate for the appellants.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26.07.2021

ORDER :-

. Heard learned Advocate Mr. S. S. Deshmukh for the appellants.

2. Present appellants are the original plaintiffs, who want to challenge the concurrent findings. They had filed Regular Civil Suit No.368 of 2008 for declaration and permanent injunction. It was contended that they are the owners of suit property consisting of two pieces of land from Gut No.138 in all admeasuring 8 Acres 22 Gunthas situated at village Bhadi, Tq. and Dist. Latur and also they have the right to take mangoes from four mango trees from Gut No.137. It is not in dispute that the relationship between plaintiff No.1 and defendant is that of sister in law and brother in law. Plaintiff Nos.2 to 7 are the children of plaintiff No.1 and nephew/niece of defendant. There was a suit bearing Regular Civil Suit No.871 of 1987 for declaration and permanent injunction between them

which came to be compromised on 26.06.1992. The suit property came to the plaintiffs by way of that compromise decree. According to the plaintiffs in spite of the said fact, the defendant was obstructing their ownership over the suit properties. Hence, the present suit.

3. The suit was objected by the defendant by filing written statement. It has been denied that the predecessor of the plaintiffs was owner of 9 Acre 37 Gunthas. It is also denied that as per the compromise decree the plaintiffs are in possession of 8 Acre 22 Gunthas out of Gut No.138 and have share in the four mango trees from Gut No.137. The defendant contended that the said compromise decree was illegal. In fact, the area of Gut No.138 is 6 Hectare 50 R, but it was wrongly mentioned in the compromise decree as 8 Hectare 6 R. There was implementation of the consolidation scheme in their village which had some error and then plaintiffs had filed appeal to the Settlement Commissioner/Deputy Director of Land Records. That appeal came to be allowed on 05.10.2007 and the mutation entry was effected on 14.12.2009. As per the said mutation entry, plaintiffs were given 35 R land from Gut No.137 and 2 Hectare 72 R land from Gut No.138. Defendant is the owner of 43 R land from Gut No.137 and 3 Hectare 58 R land from Gut No.138. Plaintiffs have not come with clean hands and suppressed many things and, therefore, cannot entitled for relief of declaration and injunction.

4. After the parties led evidence, suit came to be dismissed by learned 3rd Joint Civil Judge Junior Division, Latur on 16.06.2009. Present plaintiffs filed Regular Civil Appeal No.100 of 2009 which was heard by learned District Judge-1, Latur and dismissed on 23.01.2012. Hence, present second appeal.

5. Learned Advocate for the appellants has vehemently submitted that both the Courts below have not considered the documentary evidence as well as oral evidence properly. Though the learned Trial Judge had held that plaintiffs have partially proved that they are the owners of the suit property and possessors thereof and also the fact that they have 1/4th share in the four mango trees from Gut No.137, yet, the learned Trial Judge refused the grant of relief on the ground that the plaintiffs have not come with the clean hands. It was also held that they have not proved the cause of action. It can be seen from the contents of the written statement that the defendant was interested in denying the title as well as fact of possession of the plaintiffs over the suit property and, therefore, it could not have been held that cause of action has not been proved. The first Appellate Court even reversed those findings and held that plaintiffs have failed to prove that they are the owners and possessors of the suit properties, but then went on to say that the decree passed by the learned Trial Judge is legal and proper. On the basis of same evidence, two contrary findings have arrived and, therefore, they are giving rise to

substantial questions of law.

6. At the outset, it is to be noted that the compromise decree has been produced on record at Exhibit-26. That compromise had taken place on 26.06.1992. As per that decree, it was shown that land admeasuring 8 Acres 22 Gunthas from Gut No.138 has been given to the share of plaintiffs. However, it has come on record, by way of record of the consolidation scheme, that some area was merged in Survey No.55. Thereafter, the mutation entry had taken place when the consolidation scheme was finalized. That Mutation Entry No.606 which had come after the order passed by the Deputy Director of Land Records, Aurangabad that plaintiffs are the owners of land admeasuring 6 Acre 22 R from Gut No.138. When this fact is not further challenged before the competent authority under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, then it had achieved the finality. Further, the witness who has been examined on behalf of the plaintiffs has not given any further explanation as to on what basis, thereafter, the plaintiffs are claiming to be the owners of the land admeasuring 8 Acres 22 Gunthas rather he says that after the compromise decree was drawn in the earlier suit, they had not got the land which was given to their share measured from the competent authority. Definitely, the reasons given by the first Appellate Court based on the documentary evidence appears to be correct and legal.

7. As regards the alleged claim of 1/4th share in the four mango trees is concerned, though there appears to be some contrary findings between the Courts below, yet, it is to be noted that learned Trial Judge has taken note of the fact that when plaintiffs have come with the case that their rights were obstructed on 05.04.2008, but the person who was examined on behalf of them failed to prove that rather he was not even aware about many things, then testimony of such person cannot be believed to prove the cause of action. When the defendant has specifically challenged the cause of action, then it ought to have been proved by cogent evidence. Merely because the defendant is now in the written statement challenging the contentions in the plaint will not allow the party as well as the Court to draw an inference that such obstruction could have been raised by the defendant on the particular day. When the facts have been properly appreciated and it has legal background, it does not give rise to any substantial question of law as contemplated under Section 100 of the Code of Civil Procedure. Hence, the second appeal stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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