

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.266 OF 2013

SURESH S/O BABURAO KSHIRSAGAR
VERSUS
VANKATRAO S/O BABURAO KSHIRSAGAR
AND OTHERS

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Advocate for Appellant : Mr. A. R. Borulkar
Advocate for Respondents No.1A to 1D, 9A to 9D : Mr. C. V. Thombre
Advocate for Respondent No.4 : Mr. B. G. Deshmukh
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 22/09/2021

ORDER :

1. Present appeal has been filed by the original plaintiff challenging the concurrent Judgment and decree. He had filed Regular Civil Suit No.691 of 1994 for declaration of ownership and perpetual injunction in respect of land Survey No.41 Gut No.110 admeasuring 4 H 98 R to the extent of his 1/3rd share admeasuring 1 H 69 R situated at village Taroda Kd. Taluka and District Nanded. The said suit was dismissed by learned 5th Joint Civil Judge, Junior Division, Nanded on 16-11-2007. He preferred Regular Civil Appeal No.30 of 2008 which was dismissed by learned Adhoc District Judge-1, Nanded on 23-08-2012. Hence, this second appeal.

2. Heard learned Advocate Mr. Mr. A. R. Borulkar for appellant, learned Advocate Mr. C. V. Thombre for respondents No.1A to 1D, 9A to 9D, and learned Advocate Mr. B. G. Deshmukh for Respondent No.4. In order to cut short, it is stated that all of them have made submissions in support of their respective contentions.

3. The plaintiff had come with a case that his father defendant No.3 and brothers defendants No.1 and 2 had partitioned the land in 1983. It was the actual partition, however, prior to that their father defendant No.3 had shown partition in the year 1975 in order to save the land from Ceiling Act. He has given the shares which went to the various share holders. It has been reflected in para No.8 of Judgment of the Trial Court. It is to be noted that as per this contention land Survey No.41 admeasuring 4 A 9 G and Survey No.55 admeasuring 4 A 21 G went to the share of the plaintiff. The disputed part is Gut No.110 i.e. land Survey No.41 admeasuring 4 H 98 R. He says that the southern side of the said land was given to him and he is in exclusive possession. According to him, the defendant No.1 is the eldest brother and *Karta* of the family. He got his name mutated to the revenue record in collusion with

Consolidation Officer. Then he says that after death of defendant No.1 in the year 1995, the suit land was mutated in the name of his heirs defendants No.1A to 1D. He has claimed that since that property has gone to his share it should be declared so and he is asking for perpetual injunction.

4. The first and the foremost point is that there was first partition in the year 1975 which was as per the record. Thereafter, the plaintiff comes with a case that actual partition was effected in the year 1983, still he files suit for declaration of his ownership on 05-10-1994. This appears to be beyond the period of limitation. Further, it has not properly come on record as to when the consolidation scheme was implemented in his village. Why no attempt was made by him to get his name mutated to the property which allegedly came to his share in the partition of 1983, is not properly explained. Further, both the Courts below have considered the revenue entries. The entry that had taken place in the year 1975 states that defendant No.3 had partitioned the property amongst his heirs and intimation of that partition was given to the Talathi and then the mutation had taken place. There was nothing to show that it was for avoiding the land from Ceiling Act. Further,

as per the consolidation scheme that is implemented as per the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (the Act), statements of parties were appear to have been recorded and even the compensation has been paid for getting less area. The proper course for the plaintiff to agitate was before the consolidation officer and settlement commissioner. No such steps have been done and in view of Section 36-A of the Act, the Civil Court will not have jurisdiction to decide the question of ownership. Both the Courts below therefore rightly holding that the plaintiff had failed to prove his right and, therefore, the suit has been rightly dismissed, so also the appeal has been rightly dismissed. No substantial question of law as contemplated under Section 100 of the Code of Civil Procedure is arising in this case requiring admission of the second appeal. Hence, the second appeal stands dismissed at the threshold.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-