

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.105 OF 2018
WITH CA/1730/2018 IN SA/105/2018

Atmaram Sitaram Raut,
 Age Major, Occu. Agri.,
 R/o. Nalwandi, Taluka and
 District Beed.

.. Appellant
 (Original Defendant)

Versus

1. Pandit s/o. Ramkrishna Raut,
 Age 27 years, Occu. Agri.,
 R/o. Nalwandi, Tal. and District Beed.

2. Sugriv s/o. Ramkrishna Raut,
 Age 33 years, Occu. Agri.,
 R/o. Nalwandi, Tal. and District Beed.

3. Angad s/o. Ramkrishna Raut,
 Age 24 years, Occu. Agri.,
 R/o. Nalwandi, Tal. and District Beed.

.. Respondents
 (Original plaintiffs)

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Mr. Chaitanya V Dharurkar and Mrs. Vinaya Dharurkar, Advocates
 for Appellant.

Mr. Ankush N. Nagargoje, Advocate for Respondents.

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CORAM : ANIL S. KILOR, J.

DATE : 22th MARCH, 2021

ORAL ORDER :-

This appeal is arising out of the Judgment and decree dated 17th August, 2017 passed by the learned District Judge-4, Beed in Regular Civil Appeal No. 119 of 2010, dismissing the appeal arising out of Judgment and decree passed by the Civil Judge, Senior Division, Beed in Regular Civil Suit No. 227 of 2006, decreeing the suit filed by plaintiffs for declaration and possession.

2. Heard learned counsel for respective parties.

3. Brief facts of the present case are that suit property is 13 R land of Gut No. 57 of village Nalwandi, Taluka and District Beed. It is the case of the plaintiffs that suit land was received by the father of the plaintiffs in partition long back and since then he was in possession of the suit land, however, after his death, defendant obstructed the possession of the plaintiffs over the suit land in the month of March-2006, dispossessed the plaintiffs by claiming himself as owner of the suit property. Therefore, suit for declaration and possession was filed on the basis of title.

4. Learned trial Court decreed the suit in favour of plaintiffs and directed the defendant to deliver possession of the suit property to the plaintiffs vide Judgment and decree 27-07-2010.

5. The defendant feeling aggrieved by the said Judgment and decree, preferred Regular Civil Appeal No. 119 of 2010 before the District Judge-4, Beed, which came to be dismissed vide Judgment and decree dated 17-08-2017. The same is impugned in the present appeal.

6. Mr. Dharukar, learned counsel appearing for appellant submits that both the Courts below ignored the point of estoppel. It is submitted that, in this matter, the father of the plaintiffs himself appeared before Tahsildar on 24-04-1997 and requested the Tahsildar to record the suit land in the name of defendant. It is

further submitted that the Tahsildar thereupon carried out the mutation entry in the name of defendant as regards the disputed land. He further submitted that, therefore, doctrine of estoppel will apply and sons of the Atmaram Sitaram Raut cannot challenge the same and claim title over the suit land. In support of his contention, he relied upon the Judgments of Honourable Supreme Court of India in the case of *B.L. Shreedhar and others versus K.M. Munireddy (Dead) and others*¹ and *M/s Laxmi Narayan Arjundas and others Vs. State*².

7. Per contra, learned counsel appearing for respondents No. 1 to 3 Mr. Nagargoje opposed the present appeal and prays for dismissal of the present appeal.

8. Considering the rival contentions of the parties I have gone through the Judgments of both the Courts below and also case laws (supra) cited by learned counsel for the appellant.

9. The record shows that the whole case of the defendant is based on revenue entry carried by the Tahsildar in pursuant to request alleged to have been made by the father of the plaintiffs. There is no other evidence produced by the appellant on record to show title in his favour in respect of the land in dispute.

10. The witness, who was examined in respect of the partition, he

1 AIR 2003 Supreme Court 578

2 AIR 1969 Patna, 385

is not deposing anything about, how much total area the plaintiffs and the defendant received in partition and whether out of the same defendant received less land to the extent of 13 R.

11. Even there are no pleadings made by defendant about how much land he received in partition, if any, partition was executed. The witness of the defendant only deposed to the effect that the suit land was mutated by the Tahsildar in the name of the defendant on the request of plaintiff's father.

12. However, in absence of any oral and documentary evidence showing the title of the defendant over the suit land making any such application by plaintiffs' father to the Tahsildar to mutate the name of the defendant in respect of the suit land will amount to transfer the title in respect of the suit property in favour of defendant and as per the provisions of the Transfer of Properties Act, such transfer by unregistered document is not permissible. Moreover, the doctrine of estoppel is not applicable against the statute, as rightly observed by the learned lower appellate Court in its Judgment.

13. In the circumstances, I do not find any substantial question of law in the present matter. Accordingly, the Second Appeal is dismissed. No order as to costs. Pending Civil Application stands disposed of accordingly.

(ANIL S. KILOR)
JUDGE