

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.351 OF 2018

Keshav Kisan Khadsan,
 Age 45 years, Occ. Agriculturist,
 R/o Paturda, Tq. Sangrampur, Dist.
 Buldhana.

... Appellant
 (Ori. Defendant)
 (On R.A.)

// VERSUS //

Amolkumar Vishwasrao Sangunvedhe
 (Deceased),
 Age 21 years, Occ. Agriculturist,
 R/o Khandala, Tq. Telhara, Dist. Akola,
 since dead through L.Rs.
 Sau. Indubai Vishwasrao Sangunvede,
 Age 48 years, Occ. Agriculturist,
 R/o Khandala, Tq. Telhara, Dist. Akola.

... Respondent
 (Ori. Plaintiff)
 (On R.A.)

WITH
SECOND APPEAL NO.352 OF 2018

Keshav Kisan Khadsan,
 Age 45 years, Occ. Agriculturist,
 R/o Paturda, Tq. Sangrampur, Dist.
 Buldhana.

... Appellant
 (Ori. Defendant)
 (On R.A.)

// VERSUS //

Madhav Manikrao Sangunvedhe,
 Age 50 years, Occ. Agriculturist,
 R/o Khandala, Tq. Telhara, Dist. Akola

... Respondent
 (Ori. Plaintiff)
 (On R.A.)

Shri B.N. Mohta, Advocate for Appellant (in both Appeals).
 Shri V.B. Bhise, Advocate for the Respondent (in both Appeals).

CORAM : ANIL S. KILOR, J.

DATED : 25 NOVEMBER, 2021.

ORAL JUDGMENT

Both these appeals being connected appeals and having involved same substantial question of law are heard and decided together.

2. The relevant facts for consideration of the controversy involved in the present appeal are as follows : (The parties are referred to as per their status before the trial Court).

3. The plaintiff/respondent who had purchased two properties namely land situated at Mouza Khandala, Tq. Telhara, Dist. Akola having Gat No.13, Area 4H. 27 out of which Western 0H. 92R (2 Acre 12 Gunthas) from its owner Kisan Bapuji Khadsan and another property Gat No.14, Area 2H. 40R. from wife of Kisan namely Janabai on 22.11.1990 and since then claimed to be in possession of the suit property.

4. It is the case of the plaintiff that the defendant who is claiming to be the adoptive son of Kisan and Janabai used to create quarrel with them and therefore they filed a suit for cancellation of adoption-deed. On 19.08.2006 the defendant threatened the plaintiff by saying that the suit

field belongs to his father and he should not allow to cultivate the plaintiff henceforth. It was further threatened that if the plaintiff refused to give possession, the defendant will file false case against the plaintiff and his family and put them in jail. Hence, two separate suits were filed by the plaintiff in respect of two suit properties, for declaration and permanent injunction.

5. The defendant filed his written statement and resisted the claim and claimed that he has right over the suit properties as an adoptive son of Kisan and Janabai.

6. The learned trial Court after considering the oral as well as documentary evidence available on record decreed the suit in favour of the plaintiff vide judgment and decree dated 03.05.2014 and thereby it was declared that plaintiffs have possession over the respective suit fields as owner and defendant has no right to disturb plaintiffs' possession. The learned trial Court further permanently restrained the defendant from distributing the possession of the plaintiffs over the suit fields.

7. The defendant feeling aggrieved by the judgment and decree dated 03.05.2014 passed by the Civil Judge Junior Division, Telhara in Regular Civil Suit No.70/2006, filed two separate appeals namely

Regular Civil Appeal Nos.19 of 2014 and 20 of 2014, which came to be dismissed by impugned judgment and decree dated 15.12.2017, the same is under challenge in the present appeals.

8. I have heard the learned counsel for the respective parties.

9. This Court vide order dated 21.10.2021, has framed the following substantial questions of law:

“Whether both the Courts below have erred in appreciating the evidence adduced on behalf of the defendant on the point of his adoption by the vendor, from whom the plaintiff has purchased the suit land?”

“Whether both the Courts below have erred in appreciating the evidence considering the grievances of the defendant that there was a fraud played on his alleged adoptive parents/vendor and whether this sale-deed is not supported by any consideration?”

10. Shri Mohta, learned counsel for the appellant submits that without giving any finding by the Courts below that the registered adoption deed cannot be relied upon, the adoption-deed was discarded and both the Courts have not considered the right of the defendant as an adoptive son of Kisan and Janabai.

11. It is further submitted that both the Courts below have failed to consider and appreciate the evidence led by the defendant that there

was a fraud played on his alleged adoptive parents/vendor, as it was not supported by any consideration.

12. Per contra, Shri Bhise, learned counsel for the respondent submits that even if the defendant is considered as an adopted son of Kisan and Janabai, both the lands in question were sold out by Kisan and Janabai during their lifetime and they had never raised an objection to the validity of the sale-deeds executed by them in favour of the plaintiff, during their life time.

13. It is submitted that Kisan and Janabai had filed a suit for cancellation of the adoption deed against the defendant, however before any decision in the suit they both have died and suit was abated. However, the fact remains that Kisan and Janabai did not consider the defendant as their son.

14. It is submitted that both the Courts below have held that the suit properties are the self-acquired properties of the Kisan and Janabai therefore no error has been committed by both the Courts below in decreeing the suit.

15. To consider the rival contention of the parties, I have perused the judgment and decree passed by both the Courts below and also the record.

16. It is apparent on the face of findings recorded by both the Courts below that both the Courts below have held that the suit lands are the self-acquired properties of Kisan and Janabai. There is no finding recorded by the Courts below that the suit properties are ancestral properties and as an adoptive son the defendant has right over the suit property.

17. It is a settled law that the person possesses self-acquired property has absolute right over his/her property to retain or dispose of as per his/her wish.

18. In the present matter the learned counsel for the appellant is not disputing the fact that during the lifetime of the Kisan and Janabai the sale-deeds in question were executed and Kisan and Janabai never objected to it during their lifetime on any ground including the ground that no consideration was paid to them by the plaintiff.

19. In that view of the peculiar facts of this case, I do not find any relevance of the fact whether the defendant is an adoptive son or not.

20. In this circumstances, I do not find merit in the present appeals and accordingly I have answered the substantial questions of law in above terms.

21. Both the appeals are **dismissed**. No order as to costs.

[ANIL S. KILOR, J.]