

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

926 SECOND APPEAL NO.378 OF 2019

Punjaram Shantaram Gire
Deceased Thr. LRs Deepak Punjaram Gire
and Others

.. Appellants

Versus

Vasant Kondianna Rode

.. Respondent

...

Mr. Sushant V. Dixit, Advocate for Appellants.
Mr. Satyajit Bora, Advocate for the Respondent.

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CORAM : MANGESH S. PATIL, J.

DATE : 13-01-2022

PER COURT :

. The unsuccessful plaintiffs are before this court impugning the judgments and orders of the two courts below refusing to grant them a decree for possession of the suit property based on title.

2. I have heard Mr. Dixit, learned advocate for the appellants as also Mr. Bora, learned advocate for the respondent.

3. Mr. Dixit, learned advocate for the appellants would submit that the appellants were coming with a specific case of being

owner of the suit property, but were dispossessed in the year 2000. Though the respondent admitted the ownership of the plaintiffs' predecessor and put up a claim to the title based on a sale-deed of the year 1945, the primary evidence in the form of the original sale-deed was not produced on record. Heavy burden was lying on the respondent to establish the fact of about having acquired title. There was a complete violation of the provisions of Section 91 and 92 of the Evidence Act. Both the courts below conveniently ignored the provisions and have reached a conclusion based on other surrounding circumstances. There is a gross error and perversity in appreciating such surrounding circumstances, which has resulted in dismissal of the suit.

4. Learned advocate Mr. Dixit would then submit that though the courts below have further relied upon a circumstance in the form of a decree passed against a lady in some earlier litigation in respect of selfsame suit property, there was no amount of evidence to conclude that the lady was none other than appellant Punjaram's mother, still, the courts below have illegally relied upon the circumstance. He would, therefore, submit that going by the pleadings and the evidence that was available. The two courts below could not have reached the conclusion which they have. He would

further submit that pertinently, the respondent had put up a plea of adverse possession also, but had not substantiated it. In view of such a scenario, there was no alternative but to decree the suit since the title of the appellants' predecessor was admitted.

5. The learned advocate Mr. Bora would submit that no substantial question of law arises. Both the courts below have recorded a consistent finding of fact which cannot be interfered with in the second appeal under Section 100 of the Code of Civil Procedure (in short 'C.P.C.'). He would submit that the appellants have miserably failed to controvert the fact of passing of a decree in respect of the suit property in the suit filed by the respondents against mother of appellant - Punjaram. Apart therefrom, there was an evidence in the form of compromise entered into between Punjaram and his mother on the one hand, who were accused in the criminal case, and the respondent.

6. Apart from above state-of-affairs, the respondent had come with a candid disclosure about absence of the original sale-deed which had gone missing. Considering the fact that it was of the year 1945, one could not have readily disbelieved his such stand. There were several other attending circumstances indicating

existence of such sale-deed which were considered by the courts below. There was a long standing revenue record referring to the existence of such sale-deed. When the civil court was called upon to decide the facts in issue based on the preponderance of probability, merely because the respondent was unable to trace out the original sale-deed, there was no alternative for the courts below to refer to all the other attending circumstances which they have rightly done while reaching a conclusion about the respondent having a title over the suit property and the appellants having failed to prove their title and dispossession.

7. I have considered the rival submissions as also the paper-book of the lower appellate court. There is no dispute about the fact that the appellants' predecessor was the original owner of the suit property, which fact has been specifically admitted by the respondent in his written-statement.

8. It is also a matter of record that the respondent is banking upon a sale-deed of the year 1945 allegedly executed by the appellants' predecessor in favour of his father. He fairly mentioned in the written-statement as also in his examination-in-chief that the original sale-deed was not traceable. Again, apparently no attempt

was also made to lead secondary evidence by obtaining necessary leave of the trial court.

9. However, it is trite that a fact is to be proved in a civil proceeding on the basis of the principle of preponderance of probability. When there was nothing on record to demonstrate that the statement of the respondent was palpably false regarding existence of the sale-deed and the original was not traceable and when there were attending circumstances in the form of recitals in the revenue record referring to such a sale-deed, in my considered view, merely because the respondent had not filed the original sale-deed and no leave was obtained for leading secondary evidence to prove its existence, both the courts below, faced with the situation, were required to go through all the other attending circumstances. As is pointed out by them, there are circumstances indicating existence of such a sale-deed in the form of recital in the revenue record. If this is so, to my mind, no error is committed by the courts below in reaching a conclusion about its existence.

10. There is no specific denial about passing of the decree in Regular Civil Suit No.103 of 1978 against the mother of the Punjaram in respect of the selfsame property. Unlike, denial about existence of

a compromise in a criminal matter, in the examination-in-chief the appellant Punjaram did not specifically come out with any explanation much less denying the fact of such a decree against his mother. Conspicuously during his cross-examination also, he merely expressed ignorance about the decree having been passed against his mother. He did not deny the suggestion. If this is the state-of-affairs, when according to the appellants they were dispossessed in the year 2000, right in the teeth of the decree in R.C.S. No.103/1978 though it was a decree for injunction, the stand of the appellants about having been dispossessed in the year 2000 is not believable, as has been rightly concluded by the two courts below by appreciating the facts circumstances and evidence in their proper perspective.

11. Certainly, there are long standing revenue entries in favour of the respondent. In absence of any other concrete evidence, such revenue record does carry an evidentiary value in view of the provisions of Section 157 of the Maharashtra Land Revenue Code. The appellate court has rightly referred to it while drawing a conclusion in favour of the respondent.

12. In view of the inherent limitation in exercise of the powers of this Court under Section 100 of the C.P.C., in light of

discussion hereinabove when no error is committed by the two courts below in appreciating the pleadings and evidence, no substantial question of law arises which would enable this Court to cause any interference. The second appeal is dismissed.

(MANGESH S. PATIL)
JUDGE

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