

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 904 OF 2022
WITH
CIVIL APPLICATION NO. 17361 OF 2022
IN
SECOND APPEAL NO. 904 OF 2022

Madhukar s/o Dhondiba Janrao ... Appellant
Versus
Saraswati w/o Lalchand Waghmare & Ors. ... Respondents

...
Mrs. M. A. Kulkarni – Advocate for appellant
Mr. S. S. Gangakhedkar – Advocate for respondents
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CORAM : GAURI GODSE, J.
DATE : 28TH FEBRUARY, 2023

PER COURT :

1. This Second Appeal is preferred by the plaintiff for challenging the concurrent judgment and decree thereby dismissing the suit of the plaintiff for declaration of ownership and alternative prayer for possession of the suit property. The suit was also for challenging sale deed dated 27th July, 2001 executed by defendant no. 1 in favour of defendant nos. 2 and 3.
2. The appellant had filed Special Civil Suit No. 56 of 2001 for declaration of ownership and for declaration that he is in possession. There was also a prayer for challenging the sale deed

executed by defendant no. 1 in favour of defendant nos. 2 and 3 and in the alternative it was prayed that if the defendants are found in possession of the suit properties, the possession of the suit properties should be handed over to the plaintiff being owner of the suit property. The appellant contended in the suit that the predecessor-in title of defendant no. 1 i.e. Rajaram was given in adoption and hence, defendant no. 1 had no right in the suit property. Consequently, the submission was that since defendant no. 1 had no right in the property, the sale deed executed in favour of defendant nos. 2 and 3 was illegal, null and void. The trial court dismissed the said suit by disbelieving the case of the plaintiff, as there was no evidence produced on record to show any right, title or interest of the plaintiff in the suit property.

3. Being aggrieved by the dismissal of the suit, the plaintiff preferred Regular Civil Appeal No. 107 of 2012. By judgment and decree dated 23rd June, 2022, the appeal preferred by the plaintiff is dismissed and the decree of the trial court is confirmed. Hence, the present second appeal.

4. Learned counsel for the appellant submitted that there was a specific case made out by the plaintiff that the predecessor-in-title of defendant no. 1 was given in adoption as per the customary³ tradition and hence both the courts ought to have considered that the defendant no. 1 had no right in the suit property for transferring the same in favour of defendant nos. 2 and 3. Learned counsel further submitted that in the first appeal there was an application filed for producing additional evidence to show that the father of the plaintiff had a right in the suit property. However, that application was rejected by the first appellate court for want of pleadings. She further submitted that thereafter an application was filed for carrying out amendment to the pleadings, however, the said application was also rejected. She submitted that the rejection of the application for carrying out an amendment was challenged in this court by filing writ petition. However, the same was also rejected on the ground that by way of amendment, the plaintiff had proposed a new case. She, therefore, submitted that though no documents were produced in the trial court, by way of an application for additional evidence

the plaintiff had prayed for producing additional evidence to show the right of predecessor-in-title of the plaintiff. Hence, she submitted that the said application ought to have been allowed by the first appellate court for enabling the plaintiff to produce on record the relevant documents. She thus submitted that there is a specific ground raised in the present second appeal with respect to challenging the rejection of the application of the plaintiff filed under Order XLI Rule 27 of CPC before the first appellate court. She thus submitted that there is a substantial question of law that is required to be decided in the second appeal, that whether the plaintiff should have been given an opportunity to lead additional evidence as prayed in the application filed before the first appellate court.

5. The learned counsel for the respondents submitted that the appellant is not entitled to seek permission to lead additional evidence, as the application to amend pleadings in support of the proposed evidence is already rejected. The impugned Judgments are based on proper appreciation of facts. The second appeal does not raise any question of law, hence, the same be dismissed.

6. I have perused the record of the second appeal and considered the submissions made on behalf of the appellant. The submissions with respect to the grant of an opportunity for leading additional evidence cannot be considered at this stage, as the application for amending the plaint in support of the documents which were sought to be produced by way of additional evidence is rejected and the rejection is confirmed till this court and hence the same have attained finality. In absence of any supporting pleadings the prayer for permission to lead additional evidence for the proposed documents cannot be considered at the appellate stage. Hence, I do not see any reason for allowing application for additional evidence at this stage.
7. Perusal of both the judgments shows that all the documents as well as oral evidence is considered by both the courts and the case of the plaintiff that the predecessor-in-title of the defendant no. 1 was given in adoption is disbelieved. The ground of challenge to the right of defendant no. 1 to transfer the suit property in favour of defendant nos. 2 and 3 is only on the basis of submissions that predecessor-in-title of defendant no. 1 was given in adoption and

hence the defendant no. 1 had no right to claim interest in the suit property. Once the case that predecessor-in-title of defendant no. 1 given in adoption is disbelieved by both the courts on appreciation of evidence, there is no merit in the second ground that defendant no. 1 had no right, title or interest in the suit property. Though there is a challenge to the registered sale deed executed by defendant no. 1 in favour of defendant nos. 2 and 3, the said challenge is also again on the basis of the claim that the predecessor-in-title of defendant no. 1 had no right, title or interest in the suit property as he was given in adoption. There is nothing shown to me with respect to any separate ground of challenge to the sale deed executed by defendant no. 1 in favour of defendant nos. 2 and 3. The issues that were framed by the trial court have been answered against the plaintiff after appreciation of the evidence on record. The first appellate court has also framed specific points for consideration on the basis of grounds raised by the appellant. Both the courts have, on appreciation of evidence, recorded finding against the plaintiff-appellant. All the submissions made on behalf of the

appellant are based on facts, which would require re-assessment of all the evidence on record, which is not permissible under Section 100 of Code of Civil Procedure. The Second Appeal do not raise any substantial question of law, hence it is dismissed.

8. In view of dismissal of second appeal, pending civil application no more survives and same is also dismissed as infructuous.

[GAURI GODSE]
JUDGE