

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

SECOND APPEAL NO.581 OF 2015

Madhav Mohnaji Waghmare

Age : 68 years, Occu – Agriculture,

R/o. Loha, Tal. Loha, Dist. Nanded.

..Appellant

Versus

1. Shivaji s/o Purbhaji Waghmare
Age : 59 years, Occu – Agriculture,
Pawargalli, Loha, Tal. Loha, Dist. Nanded.

2. Kamaji s/o Purbhaji Waghmare
Age : 54 years, Occu – Agriculture,
R/o. As above.

..Respondents

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Advocate for Appellant : Mr. Devakate Anant R

Advocate for Respondent Nos.1 & 2 : Mr. M.D. Narwadkar

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 25, 2023

ORDER :-

1. Heard learned counsel for the appellant and learned counsel for the respondents at length.

2. The parties in the suit were cousins in relation. The family of the plaintiffs and defendants had the fields bearing Survey Nos.192, 278 and 279. There is no dispute about its areas. The present appellant had filed a civil suit for perpetual injunction restraining the defendants from causing obstruction and possession of Survey No.192 to the extent of his share 1H 80R. The suit was filed on 13.07.2006. The defendants appeared and filed their written

statement on 16.04.2008. They came up with a case in which the family's entire properties were divided into three parts. More share was given to the plaintiff from gut nos. 278 and 279. Hence, he had no share in survey no.192. They had come with a case that there was a partition in the year 1962 itself. In the year 1967, the Gunakar Patrak was prepared and in that Gunakar Patrak, the defendants were shown the owners. Thereafter, the applicant amended the prayer clause and the title clause claiming declaration of ownership and in alternate, recovery of possession of the suit land. The amendment was effected in view of an order below Exhibit-64 an application for amendment of the plaint. In the said application, it has been pleaded that the defendants denied to claim the title in respect of the suit land. The defendants had applied before the Tahsildar claiming their possession over the suit land and accordingly, the entries in the revenue record regarding their possession should be made in their name. Their application was allowed. The appeal against the said order has also been dismissed. However, in alternative it must be claimed by the plaintiff for recovery of the possession of the land. Hence, he sought the amendment of the prayer clause as mentioned above.

3. Both parties led the evidence. The Gunakar Patrak on the basis of which the defendants have claimed the exclusive title over gut no.192 was produced and proved by examining the revenue

officers. Both Courts relied upon the Gunarak Patrak as a document of title. The defendants have a specific case that the entire properties were partitioned in the year 1962 itself. Since there was a quality difference in the land, more quantity of the land was given to the plaintiff in survey nos.278 and 279. The Gunarak Patrak about survey nos.278 and 279 was also done and given effect. Both Courts after appreciating the evidence led before the Court held that the plaintiff/present appellant failed to prove his possession on the suit land on the basis of ownership and he also failed to prove the title and obstruction at the hands of the petitioner.

4. Against the two consistent judgments by the fact finding, learned counsel for the appellant has vehemently argued that the Gunarak Patrak is not the title document and that document needs to be interpreted. He would also submit that both Courts did not justify refusing the relief of declaration and injunction to the appellant to the long standing revenue entries which has a presumptive value under the provisions of the Maharashtra Land Revenue Code and erroneously held that respondents failed to revoke the same. He would submit that the ownership and possession of the plaintiff over the suit property was erroneously held without considering the provisions of survey and settlement manual. He would also submit that whether the issues involved in the appeal were covered by Govindrao Shankarrao Reddy Vs. Rukminibai w/o Vithal Reddy and

others, 2009 (2) Mh.L.J. 583, which both Courts did not consider. He would submit that these are the substantial questions of law to be formulated.

5. In addition to the above arguments, relying on the case of P. Chandrasekharan and others Vs. S. Kanakarajan and others, (2007) 5 SCC 669, he would submit that interpretation of a document which goes to the root of the title of a party gives rise to a substantial question of law. He further would rely on the case of S.K. Bhikan s/o Sk. Noor Mohd. Vs. Mehamoodabee w/o Sk. Afzal and others, (2017) 5 SCC 127 and argued that the issues involved regarding inheritance and ownership based on interpretation of documents, questions concerned did constitute substantial questions of law.

6. Learned counsel for the contesting respondents / defendants would submit that the plaint itself was vague. The plaintiff did not disclose the source of his title in the plaint. He had pleaded that he is the owner and possessor of gut no.192 to the extent of 1H 80R situated at Loha, District Nanded. The said land was measuring 5H 40R. He did not disclose how he got 1/3rd share in the said field. Defendant no.2 is the adjacent land holder of the plaintiff having only 10 gunthas of land and defendant no.1 had no land in the said gut number, as he had transferred his share to his son and daughter. The suit land measuring 1H 80R was his ancestral property. Hence, he is the exclusive owner and possessor of the suit land till filing of the

suit. Defendant no.2 - Kamaji sold his share to one Anil Sopanrao Yashwante by registered sale deed for Rs. 10,00,000/-. Hence, it is a valuable property. The suit land is abutting to the Nanded – Kandhar Road and near the Tehsil Office, Loha.

7. He would further argue that the Gunarak Patrak of all lands were prepared on the same day. The plaintiff never denied it. He had cleverly suppressed this fact from the Court. However, he admitted the case of the defendants that entire properties were partitioned in 1962 and according to their partition, there were only two shares in survey no.192. After having gone through the papers, he would submit that though the Gunarak Patrak was prepared about the suit land, it seems that it was not effected. The plaintiff has suppressed the fact of partition. The evidence in detail was led and both Courts have correctly held that in the partition of 1962, which was acted upon, the plaintiff has got more share in gut nos.278 and 279. Hence, he did not claim share in the suit field.

8. As far as the ratio laid down in the case of Govindrao Shankarrao Reddy (cited supra), this Court has discussed in detail the procedure about the Gunarak Patrak and laid down the ratio that Hissa Form No.4 (origination is from Gunarak Book) cannot be said to be a document creating or conferring the title over the person whose name is mentioned as occupant in this Hissa Form No.4. This Hissa Form No.4 also cannot be equated with a document creating title in

favour of the person whose name is mentioned in the column No.11 of Hissa Form No.4.

9. So, even if it is presumed that the Gunarak Patrak on which the defendants were relying upon, the title does not confer. The defendants has a specific case that there was a partition in 1962 and it was acted upon.

10. Learned counsel for the appellant has vehemently argued that the plaintiff got more share as it was of the low quality from gut nos.278 and 279. However, there was no evidence of the superior and inferior quality of the land in the same survey number. There was no case as such. The appellant has admitted the partition of 1962 without disclosing anything about the earlier partition. He simply came with a case that the suit property is the ancestral property. It is really surprising without any partition, how the plaintiff could claim ownership over a particular portion of the suit land. If it was a ancestral property, all the descendants of a common man should get their share. If the property was not partitioned, there is a presumption of jointness. In such case, the plaintiff must have filed a suit for partition. But cleverly instead of filing any suit for partition and disclosing about the earlier partition, he simply came with a case that he is the owner and possessor of the suit land as it was a ancestral property. Soon after the revenue entries were corrected, he barely amended the title clause and the prayer clause claiming declaration of

the ownership. Again he did not plead, how did he derive the ownership over the suit land. Possibly perhaps, the 7/12 extract entries which were showing his name may be a document with him to claim the possession. But he utterly failed to prove the possession over the suit land on the date of filing of the suit. One important incident which come on record that one of the portion from the said suit land i.e. from the southern side, the plaintiff had purchased from co-sharer from southern side in the name of his son as a minor. If the facts as argued have been considered for the sake of considering whether substantial question of law is involved, he purchased the extreme end portion of the southern side in the name of his son. If it so, there must have been three portions in the said land.

11. Learned counsel for the appellant states that the appellant had a middle portion share. If it was the middle portion share, in the description of the portion purchased in his name then there must have been mention that on the southern side of the said portion is the plaintiff share. But it was not done so. In that sale deed on southern side, the portion of one Motuba is shown. On this point, learned counsel for the appellant has vehemently argued that barely a mistake in description would not deprive the plaintiff from his title over the land when the document of title i.e. the Gunarak Patrak was not admissible in evidence.

12. The law is well settled that when there is dispute in the identification of the immovable properties, the description would prevail over. From inception, the plaintiff appears to be not clear about his right or title over the suit land. The plaint appears to have been cleverly drafted. Even if it is admitted as drafted, the plaintiff did not disclose his source of title of particular portion of land. He admitted the partition theory of the defendants. He also admitted that he has received more share in the field survey nos.278 and 279. He did not prove that in those fields, some portions were superior and some were inferior quality. As far as the presumption about 7/12 extract is concerned, the plaintiff itself has brought the fact on record that 7/12 extracts were corrected by the revenue authority. The Tahsildar is the authority to correct the 7/12 extract. The Tahsildar considered the fact and corrected the 7/12 extract showing exclusive possession of the defendants over the entire survey no.192. The appeal of the plaintiff was also dismissed. So, the defect that remained to be deleting the name of the plaintiff was corrected. The correction has attained the finality.

13. In the above facts and circumstances of the case, the Court is of the view that the ratio laid down in the case of Govindrao Shankarrao Reddy (cited supra) would be having no effect on the suit. It is distinguishable from facts. Two concurrent judgments are against the plaintiff. He did not prove his title. He did not come to the Court

with clean hands. Therefore, there appears to be substance in the arguments of the learned counsel for the respondents/defendants that no substantial questions of law are involved in the appeal. Hence, the appeal stands dismissed at the admission stage.

14. Pending civil applications, if any, stand disposed of.

(S.G. MEHARE, J.)