

Harish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.112 OF 2021
WITH
INTERIM APPLICATION NO.3695 OF 2020
IN
SECOND APPEAL NO.112 OF 2021**

Shri. Maruti Shankar Yadav

...Appellant/
Applicant

Versus

Shri. Laxman Balwant Chougule

(Since deceased through its legal representative)

A. Smt. Malan Laxman Chougule & Ors.

...Respondents

Mr. Drupad Patil i/b Dheeraj D. Patil, for the
Appellant/Applicant.

Mr. S. S. Patwardhan i/b Chetan G. Patil, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 13th MARCH, 2023

P.C.:

1. Heard Mr. Drupad Patil, learned counsel appearing for the Appellant and Mr. Patwardhan, learned counsel appearing for the Respondents.

2. Mr. Drupad Patil, learned counsel of Appellant-Defendnat submitted that, the following substantial questions of law are involved in this Second Appeal :

i] Whether the learned Judges of both the courts were justified in granting possession decree in respect of property adm. 47 X 20 ft, particularly

when the Plaintiff has failed to establish that the area of suit property is 47 X 20 ft?

ii] Whether the learned Judges of both the courts failed to take into consideration crucial admissions given by Plaintiff that the defendant is owner of property No. 43/2 out of CTS No. 43?

iii] Whether the learned both the Courts were justified in brushing aside crucial documentary evidence i.e. Notice dated 25/05/1985 issued by Prakash Kothavale to Plaintiff (Exhibit 65)?

iv] Whether the learned both the Courts were justified in holding that notice at Exhibit 65 cannot be looked into, because its contents are not proved, particularly when the said notice was admitted with remark that "Admitted document hence exhibited?"

3. Both the learned Trial Court as well as the learned First Appellate Court have concurrently held that the Plaintiff has proved that he has purchased the suit property by the registered sale deed dated 29th April, 1985 and defendants' possession in the suit property is permissive. It has been further held that defendant has failed to prove that, the suit property is owned by Prakash Ganpati Kothawale and defendant is his tenant.

4. Mr. Patil, learned counsel appearing for the Appellant has pointed out sale deed dated 29th April, 1985 which is at (Exhibit-43). He also pointed out notice dated 25th May, 1985 (Exhibit-65)

as well as Consent Agreement dated 6th September, 1985 (Exhibit-45). He submits that the said documents i.e. notice (Exhibit-65) and the Consent Agreement (Exhibit-45) clearly show that, the Appellant is the tenant of the suit property.

5. However, it is to be seen that the suit property has been purchased by the present Respondent-Plaintiff from Dhondiram Ganpati Kothawale i.e. father of Prakash, Nandkumar and Ashok. It is the case of the Appellant that, the suit property is allotted to the share of Prakash by Dhondiram Kothawale by partitioning the suit property and therefore, Prakash is the owner of the suit property. It is further case of the Appellant that, Prakash has created tenancy in favour of the Appellant. However, it appears that, some family dispute was there between Dhondiram and his son-Prakash and therefore, notice dated 25th May, 1985 was issued by said Prakash. The same is clarified by the Consent Agreement dated 6th September, 1985. In any case it is admitted position that, except the aforesaid two documents i.e. notice dated 25th May, 1985 and the Consent Agreement dated 6th September, 1985 there is no documentary evidence to show that the Appellant is the tenant of the suit property.

6. In the cross-examination it has been admitted by the present Appellant that there is no documentary evidence to show that the Appellant is the tenant of the suit property. There are no

rent receipts and in the written statement nothing is disclosed about when the tenancy started and what is the rent of the suit property. On the basis of evidence on record, both the learned Courts have concurrently held that, the Plaintiff is the owner of the suit property and the Defendant has failed to prove that the suit property is allotted to the share of said Prakash i.e. son of Dhondiram and he has created tenancy with respect to the suit property in favour of the Defendant. Nothing has been pointed out by Mr. Drupad Patil, learned counsel of the Appellant to demonstrate that the said finding is not in accordance with law. Therefore, there is no substance in the substantial question Nos. (iii) and (iv) raised by the Appellant.

7. As far as the substantial question Nos. (i) and (ii) regarding decree of possession granted with respect to entire suit property, it is the contention of Mr. Patil that, the suit property is consisting of Gram-Panchayat Milkat No. 43-1 and Gram-Panchayat Milkat No. 43-2 and the Appellant is the owner of Gram-Panchayat Milkat No. 43-2. Mr. Patil strongly relied on the admission of the Plaintiff wherein Plaintiff has admitted that, the Defendant is the owner of Gram-Panchayat Milkat No. 43-2. He relied on the admission of the Plaintiff wherein the Plaintiff has clearly stated that as far as Gram-Panchayat Milkat No. 43-2 is concerned, Defendant is the owner.

8. Mr. Patwardhan, learned counsel appearing for the Respondent-Plaintiff states that, in view of above, the decree of the learned Trial Court as confirmed by the learned First Appellate Court is only with respect to Gram-Panchayat Milkat No. 43-1 and as far as Gram-Panchayat Milkat No. 43-2 is concerned, the Respondent/Plaintiff is not claiming any right, title and interest. However, it is clarified that except said Gram-Panchayat Milkat No. 43-2 the Appellant has no right, title and interest with respect to other suit properties.

9. Accordingly, the Second Appeal is disposed of subject to above clarification.

10. In view of disposal of Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)