

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 443 OF 2018

Sonu Bhiku Narkar (since deceased)

Through his legal heir

Deepak Sonu Narkar

..... Appellant

VERSUS

Barma Mahadev Narkar (Deceased)

Thr. Legal Heirs

Gajanan Barma Narkar (Deceased)

Vijay Gajanan Narkar & Ors.

..... Respondents

Mr.Sanskar Marathe for the Appellant.

Mr.Aniket P.Ranade for the Respondent Nos. 1(3) and 13(2).

CORAM: RAJESH S. PATIL, J.

DATE : 29th NOVEMBER, 2023

P.C. :-

This Second Appeal challenges the concurrent findings recorded by the Trial Court and the Appellate Court. The appellant is the original plaintiff in the suit filed for possession and injunction.

2. In the earlier round of litigation, a suit was filed in the year 1955 for partition and separate possession wherein the present plaintiff was defendant no.12. There was a consent decree passed in that suit being RCS No. 14 of 1955 and thereafter a Regular Darkhast was filed. As

per the Regular Darkhast, a partition was effected in the year 1962 through the Collector, Ratnagiri. However, being dissatisfied with the said Darkhast proceedings, the defendant no.1(3) (Mr.Krishna Barma Narkar) and defendant no.13 (2) (Mr.Bapu Bandu Narkar) filed an appeal before the District Court which was decided on 15th October, 1965 and accordingly there was re-partition wherein the share of the present plaintiff and the defendant nos. 31 to 37 were put in possession of the suit property 1A and 1B.

3. In the present proceeding suit was filed in the year 1993 being RCS No. 40 of 1993, for possession and injunction, the defendants filed a counter claim thereby challenging the possession receipt dated 5th May, 1982 on the ground that the said possession receipt is pursuant to the earlier consent decree passed in RCS No. 14 of 1995. According to the defendants, thereafter there was re-partition in Appeal No. 43 of 1963 and the said fact was not taken into consideration. It is also the case of the defendants that the suit property was never ancestral property.

4. The suit filed by the plaintiff for possession and injunction was

dismissed by the Trial Court and the Appellate Court. So also the counter claim filed by the defendants was dismissed on the ground that the plaintiff has not described the suit property and has also failed to prove the dispossession of the plaintiff. No interference is warranted in the order passed by both the Courts. So also it has to be understood that certain parties have died during the pendency of the proceedings. The plaintiff did not take step to bring the legal heirs on record and further deleted these parties.

5. In view of the same, no case is made out to show that there is substantial question of law involved in the Second Appeal.

6. Second Appeal is dismissed.

[RAJESH S. PATIL, J.]