

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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SECOND APPEAL NO. 114/2016

1) Madhukar Ramkrushna Deshmukh
Aged about 53 years, occu: Cultivator
R/o Karanja (G), Tah. Karanja(G),Dist.Wardha.

2) Prabhakar s/o Domaji Cher
Aged about 60 years, occu: Cultivator
R/o New Dhabha, Karanja (G),Tah.Karanja (G)
Dist.Wardha.

..APPELLANTS

v e r s u s

1) Sudhakar s/o Tejrao Bobade
Aged about 51 years, occu; Cultivator

2) Smt.Chandubai Tejrao Bobade
Aged about 71 years, occu: Cultivator

3) Dinkar Tejrao Bobade
Aged about 71 years, occu: Cultivator
all R/o Sawal, Tah. Karanja (G)
Dist. Wardha.

..RESPONDENTS

.....
Mr.Rajat Kumar Maheshwari, Advocate for the appellants
Ms.Meghna Munshi, Advocate for Respondents
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CORAM: ANIL L. PANSARE, J.
DATE OF RESERVING : 08.08.2023.
DATE OF PRONOUNCEMENT: 10.08.2023.

JUDGMENT:

The appellants/original plaintiffs have taken an exception
to the judgment and decree dated 28th November, 2015 passed by

learned District Judge-1, Wardha in Regular Civil Appeal No.64/2011 thereby reversing the judgment and decree dated 23rd June, 2010 passed by learned Civil Judge, Jr.Dn., Karanja-Ghagde, Dist.Wardha in Regular Civil Suit No. 52/2004.

2. The appellant No.1 was the plaintiff before the trial Court. The appellant no.2 -Prabhakar Cher, was not a party to the suit, but was brought on record before the first Appellate Court as he purchased the suit property from appellant No.1. The respondents herein were the defendants before the trial Court.

3. The appellant no.1 and the respondents will be referred to hereinafter as the 'plaintiff' and 'defendants'.

4. The plaintiff has preferred a suit simplicitor for permanent injunction against the defendants for the following reasons.

5. The plaintiff claims that he owns agricultural land bearing Survey No.80 admeasuring 2.33 hectare. He purchased the agricultural land from the father of defendant nos.1 and 3 and husband of defendant no.2, vide registered sale deeds dated 14th February,2002 and 21st May, 2002. It was the case of the plaintiff that on 2nd October, 2004 the defendant nos.1 and 2 along with Tejrao Bobade (since deceased) have entered into the suit land and threatened the plaintiff of dire consequences if the plaintiff visits the suit land. On 6th October, 2004 they have stolen nine bags of soyabean from the suit field of the plaintiff. The plaintiff had lodged a report of both the incidents with Police Station, Karanja and the case is pending before the Court.

Accordingly, the suit came to be filed.

6. The trial Court was pleased to decree the suit. The first Appellate Court, however, reversed the finding. The first Appellate Court has evaluated the evidence on the basis of defence put forth by the defendants. The first Appellate Court, as such, has held that the defendants' father has indeed executed sale deeds Exhs. 43 and 50 in favour of plaintiff, however, it relied upon the admission given by the plaintiff in the cross-examination that the suit land was in the possession of Tejrão when he was alive. The defence put forth by the defendants was that the plaintiff was involved in money lending business. Thus, according to the first Appellate Court, the trial Court ought to have evaluated the evidence keeping in mind that the plaintiff was involved in money lending business, particularly when the plaintiff admits in the cross-examination that in the lifetime of Tejrão, the suit land was in his possession.

7. Mr. R.Maheshwari, the learned counsel for the appellants submits that the first Appellate Court has committed a grave error in ignoring the recitals in the sale deed. The sale deed was executed by Tejrão himself as a vendor. It is mentioned in the sale deed that the possession has been handed over to vendee i.e. plaintiff. The defendants have never challenged the execution of the sale deed. Thus, mere statement in the written statement that plaintiff was involved in money-lending business and that sale deed was nominal, ought not to have weighed, so much so that the recitals in the sale deed itself could be dislodged.

8. That apart, there is a finding of the Tahsildar dated 9th October, 2004 in a revenue case, indicating that the plaintiff was in possession of the suit land. In the circumstances, though in the revenue record, the possession of Tejrão was shown, for the plaintiff has not effected mutation entry of the sale deed and of his possession, the first Appellate Court ought not to have relied upon the revenue entries to exclude the evidentiary value of registered document i.e. sale deed.

9. I need not dwell upon the niceties of evidence in detail, in as much as the subsequent developments in this case have not been considered by the first Appellate Court. As stated earlier, the appellant no.2 was arrayed as a party before the first appellate Court. The defendants themselves, who had challenged the decree passed by the trial court before the first Appellate Court, have filed an application seeking addition of appellant no.2 herein as party-respondent in the first appeal. The reason being that he had purchased the suit land from the appellant no.1 herein, who was the sole respondent before the first Appellate Court. The sale deed was executed on 4th June 2014. The Tahsildar's order showing possession of appellant no.1 over the suit field is dated 9th October 2004. Though this order is subsequent to filing of the suit, it appears that after the death of Tejrão, the appellant no.1 has acquired the possession of the property which is now transferred to appellant no.2. The first Appellate Court was not well informed of this fact by the litigating parties and, therefore, did not mould the relief.

10. The learned counsel for the respondents though made an attempt to support the judgment and decree passed by the first Appellate Court, was unable to make convincing submission as regards

the subsequent development. The learned counsel showed ignorance of execution of the subsequent sale deed. Thus, despite the respondents having brought on record the appellant no.2 before the first Appellate Court, the counsel is oblivious of the said fact. Nonetheless, the fact remains that, if not at the time of filing of suit, subsequent to filing of the suit, the possession of the suit land was with appellant no.1 which has been transferred in favour of appellant no.2. That being so, the cause itself does not survive. I need not therefore render a categorical finding to the substantial question of law formulated by this Court, since the answer to the question would not assist this court to record any other finding than what has been said above.

11. With the above observations, the Second Appeal is dismissed, with no order as to costs.

(ANIL L. PANSARE, J.)

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