



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 SECOND APPEAL NO. 137 OF 2015
WITH
CIVIL APPLICATION NO. 4851 OF 2015
IN SA/137/2015

GULAB MURTUJA ABDUL SHAKUR
VERSUS
SHAIKH KHALIL ALIAS BABAMIYA ABDUL SHAKUR AND OTHERS

...

Mr. J. R. Shah, h/for Mr. S. V. Nyayadish, Advocate for Appellant

CORAM : Y. G. KHOBRAGADE, J.
DATE : 7th May, 2024

ORDER:

1. Heard learned counsel appearing for the appellant. None for the respondents.
2. Having regard to the submissions canvassed on behalf of the appellant, I have gone through the record.
3. It is a matter of record that the appellant/plaintiff filed Regular Civil Suit No. 94 of 2006 and prayed for decree of partition and perpetual injunction restraining the defendants from alienating the suit property in favour of anybody.
4. According to the appellant/plaintiff, field Survey No. 454/ Gat No. 885, admeasuring 1 H 32 R situated at village Ashti Tq. Partur was originally owned by Bajirao Natha Thortat and Bapu Bajirao thorat. On 25.07.1978, the plaintiff purchased the said property for consideration

of Rs.15,000/- under the registered sale deed No. 1128 of 1978 . On the basis of sale deed, mutation entry No.7 was sanctioned by the Revenue Authority and the name of plaintiff was mutated in 7/12 extract. However, in the year, 1991 dispute between the plaintiff and defendant nos. 1 and 2 arose, out of which, plaintiff lodged FIR against the defendants with the concerned police station.

5. According to the plaintiff, he purchased suit property in his name for his livelihood, he was staying at Mumbai and by taking disadvantage of his absence, defendant No. 1 got sanctioned false mutation entry no. 1731 and defendant No. 2 got mutated his name vide mutation entry No 3916 to the extent of 80 R land out of the suit property. Accordingly, the plaintiff challenged said mutation entries before the Sub Divisional Officer, Partur. However, both the defendants dispossessed him from the suit property on 07.06.2006 and illegally handed over some portion of the land in favour of Defendant No.3 and 4.

6. Defendant Nos. 1 and 2 filed written statement at Exh. 21 and resisted the claim of the plaintiff. The Defendant Nos. 1 and 2 admitted about execution of sale deed Sr. No. 1128. The Defendant Nos. 1 and 2 claimed that though the suit property was purchased in the name of plaintiff, but the plaintiff is not the exclusive owner and occupier

because the suit property was purchased from joint family income, contribution of their father and sons i.e. plaintiff and defendant No.1.

7. It is further pleaded that in the month of July 1986, oral partition was effected amongst co-owners and the suit property was given in the share of defendant No.1. Since then, the defendant No.1 is owner and occupier of the suit land. The defendants further claimed that the plaintiff orally gifted suit property to defendant no.1 and handed over possession of the same. Thereafter, on 09.08.1986, a Kararnama was executed in presence of Panchas and possession of the suit property was handed over to defendant No.2 on basis which, mutation Entry no.1731 was effected in the revenue record.

8. The defendants further contended that due to partition and Hiba (gift) defendant No.1 is exclusive owner and occupier of the suit property. Though the plaintiff filed proceedings before the Sub Divisional Officer, Partur for cancellation of mutation, but the said appeal has been rejected. So also, subsequently, some portion of land has been converted into non agricultural use and sold out some plots under various sale deeds.

9. Defendant Nos. 3 and 4 filed their written statement vide Exh. 23 and supported the claim of defendant nos. 1 and 2. According to defendant No.3, he purchased Plot No.1775 admeasuring 384.75 sq.mtr. through registered sale deed dated 02.11.2006. Similarly,

defendant No.4 purchased one plot admeasuring 297.39 sq.mtr. by registered sale deed dated 26.07.2006.

10. On the basis of rival pleadings of both parties, the learned trial court framed issues at Exh. 47. The plaintiff and the defendants relied on the oral as well as documentary evidence which have been produced before the trial court. After conclusion of the trial, on 30.03.2011, the learned Civil Judge, Junior Division, Partur dismissed the suit of the appellant/plaintiff holding that, deed of partition is not registered and not recognized under the Mohamedan Law. Further, the defendant No.1 is in possession of suit property since 1992 and the plaintiff failed to prove that the suit property was purchased from his own income. So also, the suit property was purchased by the plaintiff's father in the name of plaintiff and the plaintiff was never dispossessed by the defendants forcefully.

11. The plaintiff/appellant had filed Regular Civil Appeal No. 100 of 2011 and challenged the judgment and decree passed by the trial Court. On 20.08.2014, the learned first appellate court, on reassessment of entire evidence, held that the concept of coparcenary is foreign to Mohammedians and the family governed under the Mohamedan Law can jointly hold the property and it can be divided by meets and bounds.

12. Though the learned counsel for the appellant vehemently canvassed that the plaintiff/appellant purchased the suit property from his own income under sale deed dated 25.07.1978 and the suit property standing in the name of the plaintiff, however, the plaintiff has not adduced substantial evidence to show that in the year 1978, he was parted from Muslim joint family and he was substantially earning. Evidence of plaintiff is lacking in respect of his income and purchase of suit property from his own income.

13. Since both the courts below recorded concurrent finding that father of the plaintiff purchased the suit property in the name of the plaintiff, no interference is required in the concurrent findings. Therefore, I do not find any substantial question of law involved in the present matter. The present appeal is, therefore, dismissed. No order as to costs. Pending Civil Application stands disposed off.

(Y. G. KHOBRAGADE, J.)

JPChavan