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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.79 OF 2024
WITH
CIVIL APPLICATION NO. 4003 OF 2024

Asaram Balaji Talekar (Died) LRs & Others

APPELLANTS

VERSUS

Mahadu Sakruji Raut (Died) LRs and Others

RESPONDENTS

.....
Mr. A. G. Godhamgaonkar h/f Mr. A. A. Puranik, Advocate for the
appellants
Mr. P. R. Katneshwarkar h/f Mr. S. B. Solanke, Advocate for
respondent No.1 / caveater
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2024

ORDER :

1. By this second appeal, original defendants challenge judgment and order dated 21st February, 2024 passed by learned District Judge -3 Aurangabad in Regular Civil Appeal No. 128 of 2017, thereby allowing the appeal and decreeing the suit of respondent - plaintiffs.

2. Plaintiffs filed Regular Civil suit No. 702 of 2015 for declaration, partition and separate possession, on the basis of registered sale deed dated 24th April, 1971, by which plaintiff No.1 Mahadu s/o Sakruji Raut and defendant No.1 Asaram s/o Balaji Talekar had purchased the suit property bearing original

Survey No. 14/1 / Gut No.330 and Survey No. 161/1 totally *ad measuring* 9 Hectare 8 R. Plaintiffs claimed western half portion of the suit property by way of partition and separate possession, declaration and consequential reliefs.

3. It is the case of the plaintiffs that the suit land was jointly purchased by Mahadu and Asaram in the year 1971, by way of registered sale deed and both were having 50% share in the suit land. After purchase of the land, mutation entry No. 277 was effected in the revenue record and names of plaintiff No.1 Mahadu and defendant No.1 Asaram were mutated.

Plaintiff Mahadu and defendant Asaram were close relatives and both the family members had faith in each other and they had cordial relations. Defendant Asaram and his wife deceased Savitrabai were parents of plaintiff's deceased daughter in law Punjabai, wife of Maruti. Asaram expired on 29th December, 197 and Savitrabai expired on 24th January, 2014.

During lifetime of Asaram, plaintiffs and defendants were taking half share in the crops cultivated in the suit land. Till 20th June, 2011 defendants used to give half share in the crops to the plaintiffs, after deducting the expenses. In November, 2011, defendants No.1 to 5 refused to give half share to plaintiffs and told that plaintiffs have no concern with the suit land. They

threatened the plaintiffs that they will transfer / sell out the suit land. Plaintiffs, therefore, obtained revenue documents, through lawyer and it was realized that defendants No.1 to 5, in collusion with officers from Land Record Department and Employees from Registrar's office, have prepared forged documents in respect of the suit property. Plaintiffs therefore filed Regular Civil Suit No. 838 of 2011 in the Civil Court. Defendants requested plaintiffs to withdraw the suit and to settle the matter in the meeting of relatives. Therefore, plaintiffs, by filing *pursis* Exhibit-70, sought permission to withdraw the suit with liberty to file fresh suit, on the same cause of action. Trial Court granted said permission.

It is the case of plaintiffs that at the time of consolidation proceedings, by Mutation Entry No. 429, name of plaintiff Mahadu was deleted from ownership column of the revenue record of the suit land and following entries were effected :

- a. Mutation Entry No. 429 was effected.
- b. By Mutation Entry No. 99 on 21st February, 1984, Asaram transferred suit land in the name of his wife - Kausabai Asaram Talekar.
- c. Defendant No.1 Asaram Sold 40 R land out of the suit land to Savitrabai Shridhar Mhaske on 11th September, 2001 and accordingly Mutation Entry No. 1032 was taken in 7/12 extract.

- d. In spite of having knowledge that plaintiffs have half share in the suit land, with a view to grab plaintiffs' land, defendants on 5th June, 2012 have partitioned the suit land amongst themselves.

4. Plaintiffs, therefore, claimed that all the Mutation Entries and Entries taken at the time of consolidation proceedings are illegal, null and void. Plaintiffs have half share in the suit land and, therefore, they sought declaration that -

- a. Plaintiff Mahadu is owner of half share of the suit land, as per sale deed No. 1211 dated 24th April, 1971.
- b. Suit land be partitioned and possession of half share be given to plaintiffs.

5. Defendants No.1 to 4 filed written statement and resisted the claim of plaintiffs. They contended that since the suit of the plaintiffs is in respect of revenue entries, civil court has no jurisdiction to entertain the suit and hence it be dismissed under Order VII, Rule 11 of the Civil Procedure Code. The suit is contrary to the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and, therefore, Civil Court has no jurisdiction. It is contended that the suit is barred by limitation, as a declaration is sought that

plaintiff is owner of half portion of suit land, on the basis of registered sale deed dated 24th April, 1971. In the said sale deed, it is mentioned that plaintiff Mahadu has half share in the suit land, however, Mahadu did not give any amount to purchase the suit land. Half share of plaintiffs is specifically denied in the written statement. It is contended that the plaintiff was never in possession of the suit land. Asaram was in possession and was cultivating the suit land. At the time of consolidation proceedings also, plaintiff was not in possession of the suit land hence, name of Mahadu was deleted at the time of consolidation. Defendants denied that half share in the crop was being given to plaintiff. It is further contended that without prejudice to the contentions made in the written statement, since defendants were in continuous possession of the suit land, adverse to the interest of plaintiffs, on the basis of principle of adverse possession, defendants have become owners of the suit land.

6. Plaintiffs examined Mahadu and Kisan s/o Mahadu in support of their claim and defendants examined Sukhadeo Asaram Talekar.

7. On appreciation of evidence Trial Court dismissed the suit, holding that :

“RCS 838/2011 was not withdrawn on the ground of defect in jurisdiction of the court. Moreover, the same was not also withdrawn for other cause of

a like nature which means relating to the defect of jurisdiction. So, plaintiff cannot avail benefit of section 14 and the period for which plaintiff was prosecuting the earlier suit cannot be excluded while computing the period of limitation of this suit. In view of Article 58 of the Limitation Act a suit to obtain any declaration has to be filed within a period of 3 years when the right to sue accrues first.”

8. Appellate Court set aside judgment and order passed by Trial Court and allowed the appeal filed by plaintiff and held that plaintiff, being co-owner of the suit property, is entitled for partition to the extent of half share in the suit property and is also entitled for separate possession. Direction is issued for partition of the suit property through the competent authority. Defendant is aggrieved by this decision.

9. Learned advocate for appellants - defendants urged that name of plaintiff No.1 Mahadu was deleted during consolidation proceedings, in the year 1981 and name of defendant Asaram was exclusively mutated to the suit land. On 24th February, 1984, by Mutation Entry No. 99, name of wife of Asaram was mutated to the suit land. Thereafter, by way of partition, the suit land was partitioned between sons of Asaram (defendants). None of the entry has ever been challenged by plaintiffs, though they were aware of the same. Defendants were holding the suit land adverse to the interest of plaintiffs since 1979. Therefore, their title is perfected by adverse possession. According to him,

substantial question of law involved in the present second appeal is :

I. Whether Appellate Court has erred in applying Article 65 of the Limitation Act to the present case, as plaintiffs lost right to obtain possession of the suit property from the defendants, as defendants have become owners of the suit land by way of adverse possession and whether Appellate Court has misinterpreted section 14 (3) of the Limitation Act?

10. Learned advocate for plaintiffs, on the other hand, supported the impugned judgment.

11. Heard learned advocates for the parties at length. Perused the documents placed on record.

12. It is pertinent to note that purchase of suit land in the year 1971 in the joint name of Asaram and Mahadu is not disputed. It is contention of defendants that merely for the name sake, name of plaintiff Mahadu was mentioned in the registered sale deed and he did not contribute at the time of purchase of the suit land. However, there is nothing on record to substantiate this contention of defendants. It is a matter of record that Trial Court has held that plaintiff has proved that he is co-owner of the suit property as per sale deed dated 24th April, 1971, however, only

on the ground of limitation, Trial Court has denied relief to the plaintiff. Said finding of the Trial Court that plaintiff has proved that he is co-owner of the suit property to the extent of half share, was not challenged by defendants, by filing cross-appeal in the Appellate Court. Therefore only issue to be considered by Appellate Court was whether Trial Court was justified in dismissing the suit of the plaintiff holding that the suit for declaration is not filed within 3 years as contemplated under Article 58 of the Limitation Act.

13. The consolidation proceedings are conducted by actual survey on the spot by the competent persons under the notification issued by the State. It is on the basis of the information given on the spot, at the time of survey that the entries are made. In what manner the name of plaintiff is excluded in spite of fact that he was the co-owner by way of registered sale-deed along with deceased Asaram is not explained by the defendants. Mere exclusion of name of the true owner from the revenue record would not diminish his ownership over the land. Appellate Court has negated the contention of defendants that in the year 1980 after consolidation, plaintiff was having knowledge that his name was deleted from the revenue record, as defendants failed to establish the same by leading evidence. It is held that contention of the defendants that

plaintiff had knowledge that in the year 1980 itself his name was deleted from consolidation proceedings, is required to be proved and established by the defendants and defendants failed to lead any evidence to prove this aspect.

14. It is a matter of record that the suit filed by plaintiff, being RCS No. 838 of 2011 came to be withdrawn as per order of Court dated 28th March, 2014 and liberty was granted to plaintiff to file fresh suit on the same cause of action. Plaintiff has also prosecuted revenue proceedings and revenue authorities have observed that appropriate decision of Civil Court is required and hence plaintiff presented the suit in the year 2015. Appellate Court, therefore, held that plaintiff was prosecuting remedy before revenue authorities. Having failed in his attempt, he preferred litigation before High Court, which is pending.

15. It is a matter of record that revenue proceedings were initiated by plaintiffs on 10th April, 2014, in the said proceedings, for the first time, defendants denied plaintiffs' title to the suit land and the same has given fresh cause of action to plaintiffs to file suit. Present suit is filed by plaintiffs in the year 2015 and, therefore, the suit filed by plaintiffs for declaration was well within limitation from the date of accrual of fresh cause of action. It further appears that plaintiffs were prosecuting remedy before

revenue authorities. Even if it is assumed that plaintiffs filed present suit on the same cause of action, admittedly, earlier suit was for simplicitor injunction and in the present suit, plaintiffs have claimed declaration as well as partition. In this view of the matter, Trial Court has erred in applying Article 58 of the Limitation Act and coming to the conclusion that the suit filed by plaintiffs was beyond limitation.

16. On this issue, by relying on **“C. Mohammad Yunus V/s Syed Unnisa” 1961 CS (SC) 51**, Appellate Court has observed that -

“In the present case, even if the relief of declaration was not sought, the plaintiff is the co-owner of the property by way of registered sale deed in his name. The mutation entry to that effect was also affected in the revenue record; therefore, he was entitled for partition and separate possession even without declaration. The relief of declaration was not consequential for claiming the relief of partition and separate possession, the plaintiff could have asserted his title and claimed partition and separate possession even without seeking declaration. Therefore, the learned trial Court has committed serious error in applying Article 58 of the Limitation Act which prescribes limitation only for declaration.”

17. Considering the evidence placed on record and the peculiar facts of the present case, Appellate Court is right in holding that Article 65 of the Limitation Act, which prescribes limitation of 12 years is applicable to the present case. Appellate Court is justified in holding that Trial Court has committed error in

applying Article 58 of the Limitation Act to the present case. Appellate Court has rightly recorded a finding that the suit was well within limitation from the date of knowledge of plaintiff, when he was restrained by defendants and when defendants denied title of plaintiff to the suit land, in revenue proceedings.

18. Though plea of adverse possession is vaguely raised in the written statement, however, no evidence whatsoever is brought on record by defendants to substantiate the same. Hence, the same was rightly not adverted to by both the Courts below.

19. It is well settled legal position that revenue entries are only for the fiscal purposes and they do not confer or extinguish any title. Therefore, plaintiff, who has title to the suit land, cannot be denied relief of partition and separate possession. Admittedly, sale deed dated 24th April, 1971 is not challenged by defendants at any point of time.

20. For the aforestated reasons, there is no illegality or perversity committed by the first Appellate Court, in allowing the appeal of plaintiffs, by giving proper reasons. Appellate Court has rightly appreciated the evidence on record and has rightly interpreted Article 58 and 65 of the Limitation Act. No substantial question of law is involved in the present second appeal. Second appeal being devoid of merit, is dismissed.

21. In view of dismissal of Second Appeal, Civil Application No. 4003 of 2024 is also dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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