



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 SECOND APPEAL NO. 549 OF 2023
WITH
CIVIL APPLICATION NO. 14195 OF 2023
IN SA/549/2023
WITH
CIVIL APPLICATION NO. 14194 OF 2023
IN SA/549/2023

PANDIT AMRUT BAVASKAR
VERSUS
SHENFADU AMRUT BAVASKAR

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Mr. Chandrakant P. Patil, Advocate for the Appellant

CORAM : Y. G. KHOBRADE, J.
DATE : 30th April, 2024

ORDER:

1. Heard Shri Chandrakant Patil, the learned counsel for appellant.
2. By the present appeal, the appellants/original defendants questioned the legality and validity of the judgment and order dated 02.05.2023 passed by the learned First Appellate Court in Regular Civil Appeal No. 932 of 2017, whereby the judgment and decree dated 18.09.2017 passed by the learned trial court in Regular Civil Suit No. 37 of 2009 came to be partly modified holding that respondent/original plaintiff is the holder of the suit property instead of owner of the suit property on the strength of partition effected in the year 1979.

3. The appellants are original defendant Nos. 1, 2 and 3; Respondent No.1 is original plaintiff and Respondent Nos. 2, 3 and 4 are original defendant Nos.2, 3A, 3D and 4 in Regular Civil Suit No. 37 of 2009. For the sake of brevity, I would like to refer the parties to the present appeal in their original capacity as plaintiff and defendants.

4. According to the plaintiff he is owner and in possession of the agricultural field Gat No. 613 (old survey No. 322/2A, 322/2B, 322/2C and 1 Acre land out of Gat No. 626/1 at mauje Paldhi Tq. Jamner Dist. Jalgaon which are the subject matter of the suit (hereinafter referred to as the suit properties). According to the plaintiff his father Amrut Bavaskar was allotted the suit properties as Mahar Watan Land. His father was in possession of the suit properties. On 14.07.2000, Amrut Bavaskar died, however, prior to death of Amrut Bavaskar, the father of plaintiff and defendant, the suit properties at Survey No. 329/1B, 322/2A, 322/2B, 322/2C, 25, 26, 28, 40/4, 105/2 were partitioned and plaintiff got one Acre land out of Gat No. 626/1 and accordingly Mutation Entry No 497 recorded in the revenue record. As per Mutation Entry No. 497, the parties to the suit are in possession of their respective shares. Survey No. 329/1B divided into two parts. Western portion of the suit property came to the share of defendant Nos 1 and 2 while the eastern side portion came to the share of defendant Nos. 3

and 4. The suit properties came to the share of the plaintiffs. Since, at the time of partition the plaintiff was minor, name of his mother was recorded in the revenue record on his behalf. After marriage, defendant Nos. 5 and 6 relinquished their shares. His mother died on 24.07.1992. However, the defendants, in collusion with Talathi, got entry in the revenue record and shown their names as legal heirs of Sarubai. On 10.07.2008, the plaintiff instituted an appeal challenging the revenue entry. Thereafter, the defendants started disturbing his peaceful possession over the suit property.

5. According to the plaintiff, on 13.04.2009, when he was cultivating the land, at that time, defendants threatened to dispossess him from the land. Therefore, the plaintiff filed suit for declaration and perpetual injunction restraining the defendants from disturbing his possession over the suit properties.

6. Defendant Nos. 1 to 4 filed written statement at Exh.40 and countered the claim of the plaintiff. By filing pursis Exh.41, defendant No.5 adopted the written statement filed on behalf of defendants Nos. 1 to 4. According to the defendants, Amrut Bavaskar was having five children and the defendants were demanding partition and separate possession of the suit properties. Prior to 20/25 years, their father Amrut Bavaskar orally partitioned the suit properties and gave possession of the properties to his legal heirs i.e. plaintiff and the

defendants. Since then, they are in possession of their respective portions of land. However, the said oral partition was being a family arrangement and no physical partition was effected by meets and bound.

7. In view of the oral partition, defendant Nos. 2, 3 and 4 got 23 R land for cultivation from Gat No. 613. In Gat No. 626/1, plaintiff got one acre land for cultivation. Therefore, since last twenty years, the entry appears in the revenue record in cultivation column of Gat Nos. 613 and 626/1 in the joint names of the plaintiff and the defendants. The defendants further contended that they are paying land revenue on their behalf as well as on behalf of the plaintiff. Since only oral partition was effected being a family arrangement, the plaintiff and defendants gave statement before the Circle Officer (Mandal Adhikari) that they possess Gat No. 613 jointly and they are in joint possession of the said property.

8. The parties to the suit led evidence and subjected to cross examination on behalf of either sides. After going through the record, it clearly depicts that Amrut Bavaskar, father of the plaintiff and defendants, orally effected partition in the year 1979 and given share to the plaintiff and defendants. By virtue of the said oral partition, the plaintiff appears to be in possession of the suit land. Mutation entry No. 497 at Exh. 125 recorded on 05.03.1979 which reflects that Amrut

Bavaskar, father of the plaintiff and defendants gave Gat No. 613 to the plaintiff but at that time the plaintiff was minor and therefore, name of his mother Sarubai was recorded being caretaker. The defendants admitted about division of agricultural filed between them. Defendants also admitted the possession of the plaintiff over one acre land out of Gat No. 626/1. Therefore, it is clear that defendant Nos. 1 to 4 were not in possession of 23 R land out of Gat No. 613. PW-3 deposed that he is not in possession of 23 R land out of Gat No. 613, which corroborates the revenue entries Exh. 80 and 82.

9. Indeed, the defendants have not challenged the Mutation Entry No. 497 before the competent authority. DW-1 Tryambak admitted in his cross examination that neither he nor his brother challenged the said revenue entry before the competent authority. No doubt, the plaintiff prayed for declaration that he is owner of the suit property by virtue of partition effected in the year 1979, however, on perusal of the evidence of both sides, the learned first appellate Court held that, the plaintiff is only possessor of the suit land by virtue of the partition. It is not the case of defendants that they set out counter claim and prayed for equal partition of the suit properties. Since the plaintiff prayed for declaration of ownership over the suit land and the learned trial court declared the plaintiff being owner of the suit properties, but the said decree is modified by the learned first

appellate Court declaring the plaintiff only possessor of the property, therefore, no prejudice caused to the defendants because no rights of the parties are determined.

10. Since the learned trial court declared that plaintiff is owner of the property and restrained the defendants from interfering with his possession and the learned first appellate court modified the said judgment and decree only to the extend of holding that the plaintiff is holder of the property instead of owner, the said finding recorded by the first appellate court does not appear to be perverse.

11. In view of above discussion, I do not find that any substantial questions of law involved. Therefore, the present appeal is dismissed. No order as to costs.

12. Pending Civil Applications also stand disposed off.

(Y. G. KHOBRAGADE, J.)

JPChavan