



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 125 OF 2013

Shri Arjun s/o Ganpat Gaikwad

... APPELLANT
(Ori. Plaintiff)

VERSUS

1. Sonu Ganpat Gaikwad
2. Pandurang Ganpat Gaikwad
3. Sau. Kusumbai Suresh Kadam

... RESPONDENTS
(Ori. Defendants)

Mr. V. D. Hon, Senior Advocate i/b Mr. A. D. Sonkawade, Advocate for the appellant

CORAM : R. M. JOSHI, J.

DATE : 2nd FEBRUARY, 2024

P.C. :-

1. Against concurrent judgment and decree passed in R.C.S. No. 367/2007 dated 23/06/2010 and judgment and order dated 17/07/2012 passed in R.C.A. No. 212/2010, original plaintiff has preferred this appeal under Section 100 of the Code of Civil Procedure.
2. Parties are referred to as plaintiff and defendants for the sake of convenience.

3. Plaintiff filed suit for injunction against defendants restraining them from obstructing the measurement of suit property by City Surveyor. Defendant Nos. 1 and 2 are brothers whereas defendant No.3 is sister of plaintiff. It is a case of plaintiff that house No. 5367 situated on City Survey No. 2480(B) is self acquired property of their mother Parvatibai who died on 22/08/1998. According to him on 09/09/1992 by executing registered gift deed suit property i.e. half portion of the house was gifted to the plaintiff by her. It is alleged that the defendants are obstructing the plaintiff from carrying out measurement of the suit property.

4. Defendant Nos. 1 and 2 filed written statements. Both denied the contention of the plaintiff with regard to the suit property being self acquired property of their mother. It is claimed by the defendant No.1 that the suit property is his self acquired property purchased in the name of mother on 02/03/1972. Defendant No.2 on the other hand claims that he resides there and has repaired the part of the said property. Defendant No.3 supported plaintiff.

5. Learned Trial Court framed issues as to whether plaintiff proves that he is in exclusive lawful possession of suit property and he is entitled for injunction against defendants. Plaintiff examined himself at Exhibit 24 and also led evidence of Baburao (Exhibit 30) who is witness

to the gift deed. He also examined defendant No.3 (sister) as his witness. No evidence was led by the defendants Nos. 1 and 2. Learned Trial Court dismissed the suit with recording of the findings that the plaintiff is not in exclusive possession of the suit property and that he has failed to prove any obstruction caused by the defendants in order to grant any injunction against them. Learned First Appellate Court confirmed the said decree.

6. Learned senior counsel for the plaintiff submits that the both Courts below have erred in recording the finding about the suit property not being exclusively held by the plaintiff and that he has failed to prove the gift deed. It is his submission that since admittedly suit property is in the name of Parvatibai, in view of Section 14 of Hindu Succession Act she has become exclusive owner thereof and as such she had right to gift the property to the plaintiff which she accordingly gifted.

7. Perusal of the pleadings show that plaintiff has come out with the case that the property in question is self acquired property of his mother Parvatibai whereas the defendant Nos.1 and 2 denied the said fact. Since plaintiff has filed suit for seeking injunction against the defendants, the initial burden is on him to prove that he is in lawful and exclusive possession of the suit property. Perusal of the evidence on record shows

that plaintiff's witness, i.e. defendant No.3 has candidly admitted that the suit property is purchased by their father sale of his another house. This witness is not disowned by plaintiff by declaring her as hostile. Thus, appropriate evidentiary value needs to be given to her statement with regard to relevant fact in issue. The said admission of this witness clearly shows that the suit property is not self acquired property of Parvatibai.

8. Apart from that perusal of the evidence on record further shows that the findings recorded by the Trial Court about refusal to accept gift deed is in consonance with the evidence on record. It is also held by the Trial Court that the plaintiff has failed to prove that he is in exclusive possession of the suit property in order to seeking injunction against the defendants. This Court finds no perversity in the said findings having regard to the evidence led by the plaintiff himself.

9. In order to succeed to get order of injunction against defendants it was incumbent on part of the plaintiff to prove that the defendants actually obstructed in measurement of the suit property by surveyor. Plaintiff himself has admitted in his evidence that no City Survey Officer has visited the premises. As rightly held by the learned Trial Court that the plaintiff has failed to prove the obstruction at the hands of the defendants and hence refusal of grant of injunction against defendants is

fully justified. Record indicates that there is material inconsistency in the statement of the plaintiff in the plaint about acquisition of possession of the suit property after execution of the gift whereas the gift itself shows that the property is already in possession of the plaintiff. Thus, as rightly observed by the Trial Court there is inconsistency in the evidence led by the plaintiff which goes to the root of the case creating doubt about the execution of gift deed itself.

10. As far as contentions sought to be raised by learned counsel for plaintiff taking aid of Section 14 of Hindu Succession Act, it needs to be noted that in order to cover the present case under the said provision, the property in question must be acquired by woman, by inheritance or partition or in lieu of maintenance or by gift or by her own skill or by purchase or by prescription. There is absolutely no evidence on record to show that suit property is self acquired property of her. Similarly it is even not case of plaintiff that she acquired the property by any other mode. On the other hand, there is evidence on record to show that the property was purchased by consideration received from sale of other properties by father of plaintiff and defendants. It is not claimed by plaintiff that father purchased property for maintenance of wife. Thus, present case is not covered by Section 14 of the said Act. In any case both Courts below have rightly refused to accept alleged gift in favour of

plaintiff made by Parvatibai.

11. Moreover, since the plaintiff has failed to prove any obstruction at the hands of the defendants and also was not able to establish his exclusive possession over the suit property, this Court finds reason or justification to cause any interference in the impugned judgment. Above discussions shows that no substantial question of law is involved in this appeal. Hence, appeal stands dismissed with costs.

(R. M. JOSHI, J.)

ssp