



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 785 OF 2013

1. Ramdas Dhudku Patil
Age 51 years, Occu: Service,
R/o Kailas Nagar, Near Kadodara Gaon,
Plot No. 114, Udhana, Dist. Surat
 2. Vikram Dhudku Patil,
Age 48 years, Occu: Labour
R/o Navagaon, Near Railway Fatak,
House No. 46, Shrinath Society,
Udhana Yard, Dist. Surat
 3. Bapu Dhudku Patil,
Age 47 years, Occu: Labour
R/o Nandal Tq. Dist. Dhule
 4. Arjun Dhudku Patil,
Age 43 years, Occu: Labour
R/o Shramik Nagar, Satpur,
Near Hanuman Mandir, Dist. Nashik
 5. Gangubai Asaram Patil,
Age 46 years, Occu: Housework,
R/o Bhabale, Tq. Shindkheda, Dist. Dhule
 6. Minabai Bapu Patil,
Age 41 Years, Occu: Housework,
R/o Kavathe, Tq. Sakri, Dist. Dhule
 7. Jijabai Fula Patil,
Age 39 years, Occu: Housework,
R/o Khalane, Tq. Shindkheda, Dist. Dhule
- ... Appellants

VERSUS

1. Sopan Ramsing Rajput (Jadhav)
Age 52 Years, Occu: Agriculture,

2. Jalindar Sopan Jadhav ... **Respondents**
Age 24 years, Occu: Agriculture,
Both R/o Nane Tq. Sakri, Dist. Dhule

Mr. Subodh P. Shah, Advocate for the Petitioners,
Mr. P. B. Patil and Mr. B.B. Jamadar, Advocate for the Respondents-Absent

CORAM : Y. G. KHOBRADE, J.

Dated : 11th March, 2024

ORDER:-

1. Present appeal under section 100 of the Civil Procedure Code is directed against the judgment and decree dated 20.04.2011 passed by the learned Ad-hoc District Judge-1, Dhule in Civil Appeal No. 48 of 2009, thereby confirmed the judgment and decree dated 12.02.2009 passed by the learned Joint Civil Judge, Junior Division, Dhule in Regular Civil Suit No. 15/2008.

2. The appellants are the original plaintiffs and the respondents are original defendants in Regular Civil Suit No.15/2008. For the sake of convenience, I would like to refer the parties to the present appeal in their original capacity as plaintiffs and defendants, respectively.

3. The plaintiffs had filed suit for declaration and possession in respect of property Gat No.226/1 admeasuring 4H 18 R situated at village Nane Tq. & Dist. Dhule, which be referred to as the 'suit

property'. The Plaintiffs contended that as per the revenue record, one Dhondibai Rajaram Patil was the original owner of the suit property, who had one son namely Babulal Rajaram Patil and one daughter Bhatabai w/o Dhudku Patil. Shri Babulal Rajaram Patil was unmarried. In the year 1984, Bhatabai Dhudku Patil died and Babulal Rajaram Patil died on 25.12.1995. According to the plaintiffs, they are legal heirs of deceased Bhatabai Dhudku Patil. After marriage, Bhatabai Dhudku went to her matrimonial home for cohabitation and by taking disadvantage of this fact, the deceased Babulal Rajaram Patil entered his name in the revenue record after death of Dhondibai who died on 27.11.1987. Defendant No.1 shown Babulal Rajaram Patil as his uncle and got his name entered into revenue record in collusion with Talathi. Accordingly, the names of defendant Nos.1 and 2 are mutated in the revenue record. After noticing this fact, the plaintiffs have issued notice to the defendants on 19.09.2007, thereby calling upon the defendants to cancel the revenue entries which have been taken in the revenue record and to handover the possession of the suit land. The defendants replied to the said notice and denied that Bhatabai w/o Dhudku Patil was legal heirs of Dhondibai. Babulal Rajaram Patil never sold the suit land. So also he had no right to alienate the said property in favour of any person. The Plaintiffs further claimed that the defendants were never in possession of the suit

land during the life time of Babulal and Dhondibai Rajaram.

4. The Defendants filed their written statement at Exh.11 and resisted the claim of the plaintiffs. The defendants have not disputed about the death of Babulal Rajaram. The defendants contended that the plaintiffs are not concerned with the suit property, so also, whether Rajaram or Bajirao were husband of Dhondibai is not clear. The Defendants admitted the description of the suit property, however denied the claim of the plaintiffs. The defendants disputed about name of father and husband of deceased Dhondibai. The defendants admitted about the death of Babulal Rajaram Patil, the son of Dhondibai, in the year 1995. The defendants further contended that Babulal was never in possession of the suit property at any time before. However, their father was in possession of the suit property for past more than 40 years. The defendants further contended that initially the suit land was allotted as Survey No.164, but subsequently it was re-numbered as Survey Nos. 163 and 164, which then merged into Gat No. 226 under the consolidation proceedings. The defendants further contended that no entries in revenue record were taken in the name of Babulal Rajaram Patil. So also, plaintiffs are not legal heirs of Dhondibai Rajaram Patil or Babulal Rajaram Patil. Hence prayed for dismissal of the suit.

5. On the basis of rival pleadings of the parties, the learned trial court framed nine issues at Exh. 13. To prove the claim, the plaintiffs filed affidavit at Exh. 22 and also adduced evidence of Bapu Rajdhar Patil at Exh. 3 and closed evidence. During the course of trial, the plaintiffs produced 7/12 extract regarding suit land vide Exh. 23 for the year 2007-2008, certified copy of mutation entry bearing no. 1875 vide Exh. 24 dated 02.01.2001, notice dated 30.10.2007 vide Exh. 26 and certified copy of mutation entry no. 1694 vide Exh. 27 dated 02.11.1994. Per contra, the defendants have filed pursis Exh. 45 and decided not to adduce evidence. The defendants have filed certified copies of mutation entries No. 1610 at Exh. 30, No. 1694 at Exh. 31, No. 1576 at Exh. 32, No. 1875 at Exh. 33, No. 1592 at Exh. 4 and certified copies of 7/12 extracts vide Exhs. 36, 37, Exh. 38, Exh. 43 and Exh. 44 and property extract No. 107 at Exh. 35 regarding mutation entry no. 1610.

6. On 12.02.2009, the learned trial court passed the judgment and order holding that, though the plaintiffs proved that Dhondibai Rajaram Patil was the owner of suit land, however, the plaintiffs failed to prove that Bhatabai Dhudku Patil had acquired the suit property being sole heir of Dhondibai Rajaram Patil. So also, the plaintiffs failed to prove that they acquired title of the suit property being legal heirs of

Bhatabai Dhudku Patil.

7. On perusal of the record, it appears that on 20.04.2011, the learned first appellate court passed the judgment holding that as per evidence of Plaintiff No.1 Ramdas Dhudku Patil at Exh. 22, the appellants /plaintiffs do not have any documentary evidence to establish their relationship with the deceased Dhondibai. So also, the Plaintiffs admitted that they do not have any documentary evidence to prove that the deceased Babulal was their maternal uncle i.e. brother of Bhatabai. Therefore, the appellants/plaintiffs failed to prove their right over the suit land and they cannot claim right over the suit land merely by issuing notice Exh. 25. Further, the plaintiffs examined witness Bapu Rajdhar Patil at Exh. 39, however, this witness deposed that he does not know the name of husband of deceased Bhatabai and admitted that he had no idea about the father of Dhondibai and how Bhatabai Dhudku and Babulal Rajaram died and in which year they died.

8. Since the plaintiffs are claiming for declaration as owner of the suit property by virtue of succession or inheritance, the burden lies upon the plaintiffs to prove that they are either Class- 1 or Class- 2 legal heirs under the Provisions of Hindu Succession Act. However, the plaintiffs failed to prove their heirship, either by succession or the relationship between them and Babulal as well as Bhatabai. Therefore,

the learned trial court dismissed the suit which has been confirmed by the learned appellate Court by the impugned judgment and order.

9. The plaintiffs have not pointed out existence of any substantial question of law to interfere with the concurrent findings recorded by both the courts below. Therefore, I do not find any reason to interfere with the findings recorded by both the courts. Hence, the present appeal is liable to be dismissed.

10. In view of the above, the appeal is dismissed. Parties to bear their own costs.

(Y. G. KHOBRADE, J.)

JPChavan