



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 646 OF 2023

Omprakash Bapurao Ghume

.. Appellant

versus

Sangram Bapurao Ghume

.. Respondent

Mr. V. V. Bhavthankar, Advocate for the appellant.

Mr. D. P. Palodkar, Advocate for respondent.

CORAM : R. M. JOSHI, J.

DATE : 23rd JANUARY, 2024.

PER COURT :

1. This appeal is filed under Section 100 of Code of Civil Procedure challenging concurrent findings recorded by the Trial Court and First Appellate Court declaring plaintiff to be owner and in possession of suit property admeasuring 2 H 80 R from Gat No. 126 situated at village Andheri, Tq. Ahmedpur, Dist. Latur.

2. The facts which led to filing of this appeal can be narrated as under :-

Plaintiff claims that suit property is ancestral property of plaintiff and defendant and prior to 25 years, partition of the same took place. It is his further case that on the basis of said partition, mutation entry No. 495 was approved by virtue of which the property

came to the share of plaintiff and defendant. It is the case of plaintiff that defendant had no right in the suit property and he is obstructing possession of plaintiff by disputing his title in respect of the same. On these averments, plaintiff filed suit for declaration and injunction. Defendant though served with the summons, failed to appear and filed written statement. This contention of plaintiff went uncontested.

3. Plaintiff, in order to prove his case examined himself and also adduced evidence of Bapurao Kasle (Exh. 27), Onkar (Exh. 28) and Prakash Kalse (Exh. 31). He also placed reliance on 7/12 extracts (Exh. 35 and 36) and mutation entry (Exh. 37). The oral evidence of plaintiff also went unchallenged. Plaintiff thus has proved that the properties were ancestral properties and prior to 25 years there was partition which has resulted into they having separate possession of their respective part. Trial Court, therefore, decreed the suit.

4. Before the First Appellate Court, no prayer was made for permitting the defendant to file written statement. Record indicates that no case was made out by defendant before the First Appellate

Court showing any reason for which he was prevented from filing written statement. Having regard to these facts, since there is no dispute about previous partition and separate possession of plaintiff over the property which came to his share, this Court finds no perversity in the findings recorded by both Courts. There is no substantial question of law involved in this appeal. Hence, appeal is dismissed.

(R. M. JOSHI)
Judge

dyb