



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 819 OF 2013

1. Prakash s/o Dadarao Ingle,
Age : 59 years, Occ. Agri.,
2. Mangalatai w/o Prakash Ingle,
Age 51 yrs. Occ. Agri.
Both r/o Umri (Kd), Tq. Hadgaon,
Dist. Nanded.

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APPELLANTS

V/s.

1. Pratap s/o Kishanrao Ingle,
Age : 57 yrs. Occu. Agri.
2. Panchaphulabai Kishanrao Ingle,
Age 82 yrs., occu. Agri,
3. Subhash s/o Kishanrao Ingle,
Age 62 yrs. Occ. Agri.
All r/o Umri (Kd), Tq. Hadgaon,
Dist. Nanded.
4. Ratnamala Pundlikrao Kanke,
Age 52 yrs. Occ. Household,
r/o Mantha, Tq. Hadgaon,
Dist. Nanded.
5. Manorama Vishwanath Khillare,
Age 47 yrs. Occ. Household,
r/o Newari, Tq. Hadgaon,
Dist. Nanded.

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RESPONDENTS

WITH CIVIL APPLICATION NO. 15360 OF 2013

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Advocate for the Appellants :- Ms.Manjushri Shendge Patil h/f.

Mrs. A. S. Rasal

Advocate for the Respondents : Mr. P. G. Godhamgaonkar

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CORAM : Y.G. KHOBRADE, J.

DATE : 20.03.2024

ORDER:-

1. Heard Ms. Manjushri Shendge Patil, holding for Mrs. A. S. Rasal learned counsel appearing for the appellants and Mr. P.G. Godhamgaonkar, learned counsel appearing for the respondents at length.

2. Present appeal under section 100 of the Code of Civil Procedure is directed against the judgment and decree dated 24.09.2013 passed by the learned District Judge-2, Nanded in Regular Civil Appeal No. 61/2002, arising out of judgment and decree dated 07.03.2002 passed by the learned Joint Civil Judge, J.D. at Hadgaon, in Regular Civil Suit No. 69/1996.

3. The present appellants are the original defendant nos. 4 and 5, whereas the respondent nos. 1 and 2 are the original plaintiffs, respondent nos. 3 to 5 are the original defendant nos. 1 to 3 in Regular Civil Suit No. 69/1996. For the sake of brevity and convenience the parties to the present appeal are referred in their original capacity as plaintiffs and defendants.

4. The plaintiffs filed Regular Civil Suit No. 69/1996 seeking decree of declaration of ownership, perpetual injunction as well as restraining the defendants from interfering with their possession, recovery of possession and in alternative for partition and separate possession of their 3/5th share in the

landed property bearing gut no. 137, admeasuring 1 H. 51 R., gut no. 173 admeasuring 63 R. and gut no. 136 admeasuring 83 R. All these properties are situated at village Umari (Khd), Taluka Hadgaon, District Nanded, which hereinafter shall be referred to as the suit properties.

5. According to the plaintiffs, the plaintiff no.2 is real mother of plaintiff no.1 and defendant nos. 1 to 3. The plaintiff no.1 and defendant no.1 are sons. The defendant nos. 2 and 3 are the daughters of plaintiff no.2. The suit lands are ancestral and joint family properties of the plaintiffs and defendant nos. 1 to 3. The land revenue record in respect of suit properties were standing in the name of Kishanrao s/o Reshmaji Ingale, the husband of plaintiff no.2 and father of plaintiff no.1 as well as defendant nos. 1 to 3. Shri Kishanrao s/o Reshmaji Ingale died prior to year of filing of suit. The plaintiffs and defendant nos. 1 to 3 are his successors of late Kishanrao. After demise of Kishanrao, all suit properties mutated in the name of defendant no.1 being a Karta of joint family, consisting the plaintiffs and defendant nos. 1 to 3. However, due to family dispute, partition was effected between them prior to 7 years of filing of suit. According to the plaintiffs, in partition no shares was allotted to the defendant nos.2 and 3 because both of them relinquished their rights as per their will and desire. In partition, 76 R. land of the southern side was allotted to the share of the plaintiffs, out of gut no.

137 admeasuring 1 H. 51 R. and remaining 76 R. land from northern side was allotted to share of the defendant no.1. Similarly, out of gut no. 173 admeasuring 63 R., half portion i.e. 32 R. land into two pieces from northern side was given to the share of plaintiff no.1 and remaining portion of southern side admeasuring 32 R. land was given to the share of defendant no.1. So also, the land gut no. 136 admeasuring 83 R. was given to the share of defendant no.2. Accordingly, separate possession of lands allotted to the shares of plaintiffs and defendant no.1. Since then they are in possession of their respective shares.

6. According to the plaintiffs at the time of partition, the defendant no.1 had agreed to transfer the land as per share of plaintiffs, however, no such land was transferred in their name. Therefore, they requested many times to the defendants for giving lands as per their shares, but the defendant no.1 avoided to transfer lands in their favour and they are deprived from their legal rights, but the defendant no.1. trying to alienate suit properties in the name of other persons, hence prayed for decree of perpetual injunction.

7. The plaintiffs further pleaded by way of amendment that, during the pendency of suit, the defendant no.1 executed sale-deed in favour of defendant no. 5 in respect of 83 R., land out of gut no. 136. Therefore, said transaction not binding upon them and they are entitled to recover possession

of the land gut no. 136. The plaintiffs further contended that, the defendant nos. 4 and 5 dispossessed the plaintiff no.2 prior to two years of filing of suit and made entries in the revenue record on the basis of sale-deed. Therefore, the plaintiffs prayed for decree of declaration of ownership, perpetual injunction, recovery of possession and alternatively, for partition and separate possession.

8. The defendants no. 1 filed written statement at Exhibit 28 and denied claim of plaintiffs. The defendant nos. 2 and 3 remained absent, in spite of service of notice, hence suit proceeded ex-parte against them.

9. The defendant nos. 4 and 5, vide their written statement at Exhibit 65, resisted the suit and filed amended written statement at Exhibit 133.

10. According to the defendant nos. 1, 4 and 5, the suit properties are joint Hindu family property of deceased Kishanrao Ingale. The plaintiffs and the defendant nos. 1 to 3 are successors of deceased Kishanrao. The defendants have not disputed that after demise of said Kishanrao, all suit properties mutated in the name of defendant no.1 -Subhash being elder member and Karta of family of the plaintiffs and defendant nos. 1 to 3. The defendants also not disputed about partition of the lands between the

plaintiffs and defendant no.1 prior to 7 years of filing of the suit and relinquishment of shares by the defendant nos. 2 and 3. These defendants not disputed about allotment of the 76 R. land out of gut no. 137 of southern side to the share of plaintiffs and remaining northern side 76 R. allotted to the share of defendant no.1. Similarly, in partition the land admeasuring 32 R. out of gut no. 173 was allotted to the share of plaintiff no.1 and remaining 32 R. land was allotted to the defendant no.1, however, they denied about allotment of share to the defendant no.2 from gut no. 136 to the extent of 83 R. land. The defendants pleaded that, land admeasuring 83 R. out of gut no. 136 was owned and possessed by the defendant no.1, who sold said land to the defendant no.5 for repayment of family debt which was obtained for improvement of the family. The defendants denied about avoiding of transfer of land in the names of the plaintiffs and trying to alienate suit land by taking benefit about mutation entry in his name, in the revenue record. The defendant nos. 4 and 5 further denied about execution of sale-deed in favour of the defendant no. 5 in respect of land admeasuring 83 R. out of gut no. 136. So also, some portion from suit land transferred in their favour under sale deed dated 05.09.1996 on payment of consideration amount. Therefore, prayed for dismissal of the suit.

11. In order to prove the plaintiffs' claim, the plaintiff no.1 examined

at Exhibit 72. The plaintiffs also examined PW.2 -Nivrutti at Exhibit 73. Per contra, the defendant no.1 did not step into witness box. The defendant nos. 4 and 5 examined the defendant no.4 Prakash at Exhibit 92, D.W. 2 Panditrao at Exhibit 98, D.W.3 Yashwant at Exhibit 99. The sale-deed Exhibit 100, 7/12 extract Exhibits 81, 96, 97 are duly proved.

12. After hearing both the sides, on 07.03.2002, the learned trial Court passed the judgment and decree and decreed the suit of the plaintiffs declaring that, the plaintiff no.1 is owner and possessor of the suit land gut no.137 to the extent of 76 R. and 32 R. out of land gut no. 137 as described in prayer clause 'A' of the suit. Similarly, plaintiff no.2 was declared as a owner of the suit land to the extent of 83 R. out of land gut no. 136 as per the four corner boundaries described therein and the defendants are restrained perpetually from causing any obstruction in the possession of the plaintiff no.1, over the suit land to the extent of 76 R. out of gut no.137 and 32 R. out of gut no. 173. Further, the defendants are restrained perpetually from causing any interference in possession of the plaintiff no.2 over the suit land to the extent of 83 R. out of gut no. 136. Further, defendant no.1 was restrained from alienating suit land admeasuring 76 R. out of gut no. 137 which has fallen to the share of plaintiff no.1 and land admeasuring 32 R. out of gut no. 173 came to the share of plaintiff no.1. Further, the plaintiff no.2 -

Panchafulabai shall recover the possession of suit land admeasuring 83 R. out of gut no. 136.

13. On perusal of the record as well as the findings recorded by both the Courts below, it *prima facie* appears that, the suit lands are ancestral properties of the plaintiffs and defendant No.1 because it was joint family property of deceased Kishanrao Ingale. After said demise of said Kishanrao, all the lands mutated in the name of defendant no.1 -Subhash being elder member and Karta of the family of plaintiffs and defendant nos. 1 to 3. It is not in dispute about effecting partition of land between the plaintiffs and defendant nos. 1 to 3 prior to 7 years of filing the suit. Needless to say that, in partition, southern side portion admeasuring 76 R. land out of gut no. 137 came to the share of plaintiff no.1 and remaining northern side 76 R. land out of gut no. 137 was allotted to the defendant no.1. Similarly, land admeasuring 32 R. out of gut no. 173 was allotted to the share of plaintiff no.1 and remaining 32 R. land was allotted to the share of defendant no.1. Though the defendant nos. 3 and 4 denied that, the suit land admeasuring 83 R. land out of gut no. 136 was allotted to the share of plaintiff no.2, but said land owned and possessed by the defendant no.1, who sold the said land to the defendant no.5 for repayment of family debt obtained for betterment of the joint family. But, the defendant no.1 has not pleaded in his written

statement Exhibit 28 that, land gut no.136 was given to him for repayment of the family debt. Therefore, the learned trial Court as well as the First Appellate Court held that the plaintiffs proved about receiving 76 R. land out of gut no. 137 from southern side, 32 R. land out of gut no. 173 and remaining half portion of both these survey numbers was given to the share of defendant no.1. So also, the suit land gut no. 136 admeasuring 83 R. land was given to the share of plaintiff no.2. So also, the plaintiffs have proved that they are owners of their respective shares and answered issue nos. 3 and 4 in the affirmative. Therefore, findings recorded by both the Courts below does not appear contrary to the evidence available on record. Therefore, I do not find that any substantial questions of law is involved in the instant appeal, hence, it needs to be dismissed.

14. In view of above discussion, I proceed to pass the following order :

ORDER

- I) The present appeal is hereby dismissed.
- II) Record and proceedings, if any, received be remitted back to the trial Court.
- III) Civil Application pending, if any, also stands disposed off.

[Y.G. KHOBRADE, J.]