



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.368 OF 2016
WITH
CIVIL APPLICATION NO.701 OF 2016
IN
SECOND APPEAL NO.368 OF 2016

Shri. Shivaji Nagu Gurav and Ors. ... Appellants.
Versus
Shri. Anant Ramchandra Gurav and Ors. ... Respondents.

Mr. Vijay Killedar, Advocate for the Appellants.
Mr. Sagar G. Talekar, Advocate for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : JANUARY 09, 2024

P. C.:

1. Being dissatisfied with the judgment of the Appellate Court dated 1st March, 2016, reversing the findings of the trial Court in Regular Civil Suit No.146 of 2011, whereby Regular Civil Suit No.146 of 2011 came to be decreed by the Appellate Court, the present Appeal has been filed by the original Defendants.
2. The facts of the case are that the Regular Civil Suit No.146 of 2011 was filed by the plaintiff seeking declaration of

ownership in respect of the suit property i.e. agricultural land being Survey No.6. The genealogy reproduced in the Appellate Court's judgment indicates that one Luka was the common ancestor, who had three sons Sitaram, Keshav and Ganpat. Sitaram's son was Ramchandra @ Bolya and the plaintiffs are the sons of Ramchandra. The defendants belong to the branch of Ganpat and Keshav had died issue-less.

3. The case of the plaintiff is that the suit property is owned by the plaintiff's family by virtue of the father of the plaintiff i.e. Ramchandra being protected tenant prior to 15th April, 1948, which is reflected in the mutation entry No.419. It is further pleaded that upon the tillers day, the plaintiff's father i.e. Ramchandra was cultivating the land and as such, was entitled to purchase the property owned by Purushottam Mahadev Gadage. The purchase price under 32G proceedings of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) was fixed at Rs.689.68 which was paid by the plaintiff's father and the sale certificate dated 12th October, 1988 was issued in the name of plaintiff's father and mutation entries to that effect was effected in

the revenue records.

4. It is further pleaded that the defendants or the predecessors have not challenged these mutation entries in favour of the plaintiff's father and after the demise of plaintiff's father the name of plaintiff came to be entered into the suit property. It is further pleaded that the predecessor of the plaintiff and the defendant were the tenants of different properties and became the owners upon purchase of those properties under the tenancy Act. According to the plaintiff, the cause of action arose when the defendants by mutation entry No.5095, mutated their names as co-owners in the property.

5. The suit came to be resisted by the defendant on the ground of limitation and valuation of the suit property. It was further contended that at the time of the 32G proceedings, the wife of Ramchandra had given a statement on 9th December, 1961 that the suit property is being cultivated since their ancestors and that the said statement indicates that the property was the joint family property. It was further contended that as per the oral partition, the suit property was being cultivated by the plaintiff

and the defendants and there was a map which was prepared pursuant to the oral partition. It was further contended that the sale price of the suit property was not paid by Ramchandra and in fact, the father of the defendant Nos.6 to 8 i.e. Dattatray had paid the price of the suit property 11th October, 1988. It was further contended that the purchase price could not have been paid by Ramchandra as he had expired in the year 1976.

6. The parties went to trial and the trial Court by judgment dated 30th August, 2013 dismissed the suit, as against which Appeal came to be filed being Regular Civil Suit No.83 of 2013. The Appellate Court reversed the finding of the trial Court and declared the plaintiff as exclusive owner of the suit property.

7. Heard Mr. Killedar, learned counsel for the Appellant and Mr. Talekar, learned counsel appearing for the Respondents.

8. Mr. Killedar, learned counsel appearing for the Appellant would submit that the evidence on record would indicate that the suit property was being jointly cultivated by the joint family. He seeks to place reliance upon the statement of Ramchandra's wife

given in the 32G proceedings that the suit property was being cultivated since the time of their ancestors. He would further submit that the notice as regards 32G proceedings was issued not only to Ramchandra but also to Ganpat and that the price of the suit property which was determined as Rs.689.68, was required to be paid in installments alongwith interest which has been paid by Dattaram, father of defendant Nos.6 to 8 which is indicated by the document below Exh.50 at page 89 of the documents annexed to the Civil Application. He would further submit that in the evidence, the plaintiff has accepted that he is not aware as to when the purchase price was paid and he has also admitted the receipts at Exh.50 and Exh.51 which show that the purchase price has been paid by the Dattaram. He would further submit that the Appellate Court without considering the effect of Exh.50 which shows that the purchase price has been paid by Dattaram has relied upon the 32M certificate issued in the name of Ramchandra dated 10th January, 1962 which is Exh.26. He relied upon the decisions in the case of **Vithu C. Agaskar & Ors. v. Rama Gajanan Agaskar & Ors.** (2018 (4) Bom.C.R. 711) and in the case of **Ravji Ramu Bhuravane**

(deceased) through his LRs & Ors. v. Sanjay Tukaram Bhuravane & Ors. (2018 SCC OnLine Bom 10180) to support his submission.

9. Considered the submissions and perused the records.

10. As far as 32G proceedings are concerned, there is no dispute that the notice had been issued to Ramchandra and although the notice was also issued to Ganpat in proceedings under 32G apart from the land owner and the tenant cultivating the land and all other persons who are interested in the property are entitled to raise an objection and as such, the notices are issued to all the interested persons. The revenue records about which there is no dispute and marked as Exh.31 for the period 1951-1963 and 1964 shows the name of Ramchandra as tenant and in the cultivation column the name of Ramchandra is mutated. The submission of Mr. Killedar is that the cultivation column of the revenue record would not indicate that the same has been cultivated on behalf of the joint family, however, there is no submissions that the predecessors of plaintiff and Defendants were joint tenants.

11. The judgment of the Appellate Court would indicate that various mutation entries are produced on record by the plaintiff to establish that the defendants are having their separate Khatas of the agricultural land and that these lands were acquired under tenancy. In the face of documentary evidence, the conclusion drawn by the Appellate Court that the plaintiff and the defendants are cultivating different properties separately cannot be faulted.

12. As regards the contention that Ramchandra's wife in the 32G proceedings have made a statement that the property is being cultivated since their forefathers, it needs to be noted that in 32G proceedings, it is the tenant who is required to record the statement. The statement at page 32 of the civil application would show that the question put was whether the entire land which forms part of the notice is being cultivated by Ramchandra to which the response is that since their forefather. The statement cannot be said to be an admission on part of the wife of Ramchandra that the property was being cultivated jointly especially in the face of the revenue records which have been produced by the plaintiff on record for the period 1951-1963 and

1964 showing the name of Ramchandra as a tenant in the cultivation column. There is no evidence documentary or otherwise which was brought on record to demonstrate that the suit property was joint family property and there was joint tenants. As such, evidence on record conclusively establishes that it was Ramchandra who was cultivating the land on the tillers date. The notice would also indicate that the notice was issued to Ramchandra and the 32M certificate is also issued in the name of Ramchandra. It needs no debate that a certificate issued under 32M certificate of the Tenancy Act, is conclusive as regards the contents therein. Much emphasis has been given as regards the payment which has been made by Dattaram inasmuch as the receipt which is Exh.50 shows that the amount of Rs.1527/- has been paid by Dattaram on 11th October, 1988. Admittedly, the purchase price was fixed at Rs.689.68 and the amount alongwith interest is Rs.841.62. The certificate of Additional Tahsildar at page 51 of the Civil Application dated 1st December, 2010 shows payment of Rs.689.68/-.

13. The Appellate Court has recorded that the pleadings in

the written statement does not explain the discrepancy in the amount. Before this Court as to the document shown as Exh.50 which would indicate that the payment was made by Dattatram, the justification by Mr.Killedar is that the same was with interest amount. However, as observed the 1st Appellate Court that there are no pleadings and evidence to that effect.

14. From the documentary evidence which has come on record, the Appellate Court has come to a finding that a certificate under 32M is issued in the name of Ramchandra. The certificate has been issued on 11th October, 1988 and there is no challenge to that certificate by the defendant till this date. On the basis of the documentary evidence it can be concluded that Rajaram was the tenant who was cultivating the property on the tillers date 1st April, 1957. The purchase price was paid and thereafter he has been declared as the owner by virtue of the 32M certificate issued in his favour. The Appellate Court has rightly appreciated the documentary evidence on record and there is no perversity of illegality which is pointed out in the findings based on the evidence, documentary or otherwise. In the absence of any

perversity, there is no substantial question of law involved in the present case.

15. As regards the decision in the case of **Vithu C. Agaskar** (supra) is concerned, the said decision is clearly inapplicable inasmuch as in the facts of that case, admittedly, the father of Vithu Agaskar was the tenant of the property and his name was recorded in the survey record as tenant. It was subsequently that one of the son got his name mutated in the revenue record and as well as the 32G proceedings in his favour. The facts of the case is clearly distinguishable and inapplicable.

16. As regards the decision of **Ravji Ramu Bhuravane** (supra) is concerned, in that case the learned Single Judge was considering the provisions of Order XXII Rule 9 of the Code of Civil Procedure, 1908 and on the basis of evidence in that case held the property was acquired in the name of one Ravji for joint family. Findings based on the evidence adduced in that case cannot be applied to the facts of the present case. The decision are therefore inapplicable.

17. Having regard to the discussion above, there is no substantial question of law arising in the present case. Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Application does not survive and stands disposed of.

(Sharmila U. Deshmukh, J.)