

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 30 OF 2024

Shri. Amol Tatoba Kamaldharne
Pujari (Gurav) and Ors.

....Appellants

V/s.

Ramchandra Anna Pujari (Gurav)
Deceased through his Legal Heirs
Jagadish Ramchandra Pujari and Ors.

....Respondents

Mr. Balwant Salunkhe, for the Appellants.

CORAM : SANDEEP V. MARNE, J.

Dated : 15 January 2024.

PC. :

1. The Appeal is filed against the concurrent findings recorded by the Civil Judge Junior Division, Aatpadi decreeing Plaintiffs' suit for possession and by the Principal District Judge, Sangli dismissing Regular Civil Appeal No. 101 of 2012.

2. I have heard Mr. Salunkhe, the learned counsel appearing for the Appellants.

3. Regular Civil Suit No. 7/2006 was instituted by the legal heirs of Late. Ramchandra Anna Pujari for recovery of possession of the suit property from the two Defendants, viz Amol and Atul, who happen to be children of Tatoba Kamaldharne. It was Plaintiff's case that the suit properties were purchased by Maruti Anna Pujari and they were his self-acquired properties. That Maruti died issueless and therefore Ramchandra, being Maruti's brother, became owner of the suit property. Plaintiffs further pleaded that during his lifetime, Maruti had permitted Tatoba to reside in the suit properties as gratuitous licensee. Tatoba's earlier name was Bhagwan and infact he was brother of Maruti and Ramchandra. However, it is an admitted position that on 10 December 1969, Bhagwan (later renamed as Tatoba) was given in adoption to a different family. In that view of the matter, since Bhagwan/Tatoba was given in adoption to different family during lifetime of Maruti, who died in the year 1995, Bhagwan/Tatoba lost right to succeed to the estate of his brothers, Maruti or Ramchandra. In that view of the matter, Defendants could not claim any ownership in respect of the suit properties.

4. Mr. Salunkhe would rely upon the provisions of Section 12 of the Hindu Adoption and Maintenance Act, 1956 in support of his contention that the properties in respect of which rights are acquired by the adopted child prior to adoption remained unaffected even after adoption. There can be no dispute to this proposition. However in the present case, the adoption of Tatoba has taken place on 10 December 1969 when Maruti was alive. There is no document on record to

indicate that Maruti had transferred ownership in respect of the suit properties to Tatoba. Therefore reliance on Section 12 of the Act would not enure to the benefit of Appellants/Defendants.

5. On the other hand, since Maruti did not have any child, his brother Ramchandra has claimed ownership in respect of the properties of Maruti. In that view of the matter, it gets conclusively proved that the Defendants did not have any ownership rights in respect of the suit properties and on the contrary Ramchandra would succeed either partly or fully to the properties owned by Maruti.

6. The next aspect sought to be raised by Mr. Salunkhe is about the findings recorded by the Trial Court about the proof of ownership only on the basis of tax receipts relied upon by the Plaintiffs. Mr. Salunkhe, in this regard would rely upon the judgment of the Apex Court in *Balwant Singh and Anr. Etc.*¹ in support of his contention that revenue entries made for fiscal purposes do not and cannot confer ownership rights on the parties. Again, there can be no dispute about this proposition. However, in the present case, it has been conclusively proved that Appellant's father Tatoba lost any rights in respect of the properties of Maruti on account of his adoption in the year 1969. Conversely, Ramchandra being the real brother of Maruti, became entitled to succeed to the properties of Maruti. Therefore, finding of ownership could otherwise be recorded on the basis of

¹ Balwant Singh & Anr. Etc. Vs. Daulat Singh (Dead) by Lrs. & Ors. Civil Appeal No. 293 of 1984 decided on 4 July 1997.

relationship between Ramchandra and Maruti and it was not even necessary to rely upon the tax receipts.

7. The next issue sought to be raised by Mr. Salunkhe is about suit of the Plaintiffs being bad for non-joinder of necessary parties. According to Mr. Salunkhe, in addition to Ramchadra, there were two sisters, Shantabai and Kamalabai who were also entitled to succeed to the estate of Maruti. In my view, this issue would be irrelevant for the purpose of deciding the suit for recovery of possession filed by the Plaintiffs. Whether Plaintiffs are sole owners or whether there are additional owners or not is something which need not be taken into consideration in suit filed for recovery of possession from the Defendants, who have no title in the suit property. In my view, therefore the plea of non-joinder of the necessary parties has rightly been repelled by the Trial Court and the first Appellate Court.

8. The last issue sought to be urged by Mr. Salunkhe is about possession of the suit properties being handed over by Maruti in favour of Tatoba. Mr. Salunkhe has submitted that this position of handing over possession of suit property to Maruti to Tatoba has not been disputed and has been conclusively proved. However, perusal of the Written Statement filed by the Appellant/Defendants would indicate that they did not claim title on the strength of adverse possession. They neither pleaded nor proved before the Trial Court that possession of the suit properties by them was adverse to the Plaintiffs for the purpose of conferment of title. Therefore, mere

possession of properties by the Defendants would not mean that the Plaintiff could not seek recovery of possession of the suit properties. Both the Trial as well as the first Appellate Court have recorded a finding that the Appellants/ Defendants were merely gratuitous licensees and have no right to continue in the suit premises. These are findings of facts, in which this Court need not interfere.

9. Considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the present Appeal. The Appeal is accordingly **rejected**.

SANDEEP V. MARNE, J.