

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 27 OF 2024
WITH
INTERIM APPLICATION NO. 774 OF 2024**

Arjun Pralhad Dhane & Anr.

.. Appellants

Versus

State of Maharashtra & Ors.

.. Respondents

...

Mr. Vishwanath S. Talkute for the Appellants.

...

CORAM : SANDEEP V. MARNE J.

DATE : 22 JANUARY 2024.

P. C.:-

1) The Appellants have filed the present Appeal challenging the Judgment and Order dated 21 November 2022 passed by District Judge, Pandharpur dismissing Regular Civil Appeal No. 26 of 2009 and confirming the Decree dated 17 November 2008 passed by Civil Judge Senior Division in Regular Civil Suit No. 42 of 2000.

2) Plaintiffs filed Regular Civil Suit No. 42 of 2000 for a declaration that they are the owners in respect of suit property bearing Gat No. 161 of Village Shegaon-Dumala, Tal. Pandharpur, District Solapur. Plaintiffs further sought recovery of possession of suit property from Defendant Nos. 4 and 5. Plaintiffs also sought mesne profit by the conduct of enquiry under Order 20,

Rule 12 of the Code of Civil Procedure, 1908 (**Code**). In that suit, the Appellants herein were impleaded as Defendant Nos. 4 and 5. The Trial Court proceeded to decree Plaintiff's suit on 17 November 2008 declaring Plaintiffs to be owners of suit property. Defendant No. 5 was directed to hand over possession of the suit property to the Plaintiffs. Defendant No. 5 is also directed to pay compensation of Rs.10,000/- for unauthorized possession of the suit property. The Trial Court further directed enquiry in respect of income derived out of suit property under Order 20, Rule 12 of the Code. Defendant Nos. 1 to 3 were directed to effect necessary entries in the revenue records in the name of Plaintiffs.

3) Aggrieved by the decree of the Trial Court Defendant Nos. 4 and 5 of the Regular Civil Appeal No. 26 of 2009 in District Court, Pandharpur. The Appellate Court has however proceeded to dismiss the Appeal by its Judgment and Order dated 21 November 2022. Aggrieved by the decisions of the Trial Court and the first Appellate Court, Appellants, who are original Defendant Nos. 4 and 5, have filed the present Appeal.

4) Mr. Talkute, the learned counsel appearing for the Appellants would submit that the Trial Court and the first Appellate Court have erred in holding Plaintiffs to be owners of suit property. That the case of the Plaintiffs about ownership of suit property was premised on alleged allotment of land towards resettlement benefits by the government authorities. That therefore Plaintiffs ought to have produced the allotment order of suit property in their name. That the burden of proof of allotment of suit property in their name rested on the shoulders of Plaintiffs. That the Trial Court and the first Appellate Court have erred in drawing surmise of ownership of Plaintiffs in the absence of any concrete documents of title. That the Challan produced by Plaintiffs was about payment of occupancy price in respect of earlier allotted

land, which allotment was subsequently cancelled. That the said occupancy price is not paid in respect of suit property. That the letter dated 31 March 1979 relied upon by Plaintiffs is about the choice to be exercised by Plaintiffs for allotment of alternate land. That the third document relied upon by Plaintiffs was in respect of intimation given by the Resettlement Officer about taking over possession of the suit property. That the said letter does not prove that the suit property is allotted in the name of Plaintiffs. That even in the Register, extract of which is produced by Plaintiffs, cannot be relied upon to prove allotment of land in the name of Plaintiffs. That the entry made in the Register does not *ipso-facto* prove allotment of the suit property in favour of Plaintiffs. In support of his contention. Mr. Talkute would rely upon the judgment of the Apex Court in the ***City Municipal Council Bhalki Vs. Gurappa (D) By LRs & Anr.*** 2015 (6) ALL MR 476 (S.C.) and ***Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale & Ors.*** (2007) 6 Mh.L.J. 609.

5) I have considered the submissions canvassed by Mr. Talkute and have gone through the Judgments of the Trial Court and the first Appellate Court. No doubt, since the issue of ownership was framed by the Trial Court, the burden of proving ownership of suit properties rested on the shoulders of Plaintiffs. It is an admitted position that the suit property was initially allotted in favour of Digambar Kashinath Dhane. It appears that the Mutation Entry to that effect was effected in the name of Digambar Kashinath Dhane. However by Order dated 10 October 1996, the allotment made in favour of Digambar Kashinath Dhane was cancelled. Therefore, Digambar Kashinath Dhane, through his Power of Attorney Holder Dnyaneshwar Bhagwan Borate (Appellant No. 2) instituted Regular Civil Suit No. 61 of 1996 in the Court of Civil Judge Senior Division, Pandharpur. During the pendency of the suit, Digambar Kashinath Dhane expired and therefore Arjun Pralhad Dhane

(Appellant No.1) was brought on record as his legal heir. However, Regular Civil Suit No. 61 of 1996 came to be dismissed by Judgment and Order dated 24 April 2002. Thus cancellation of allotment of Digambar Kashinath Dhane attained finality.

6) On the other hand, on account of the acquisition of the property at Village Javalgaon, Rama Daji Navale became project affected person, and accordingly, land bearing Survey Nos. 9/6, 20/2/B and 59/1 were selected by him as alternate land. Purchase price of Rs.1612/- was paid for allotment of the alternate land. However, it transpired that the land which was selected by Rama Daji Navale was already allotted to someone else. Therefore by letter dated 31 March 1979, Rama Daji Navale was called upon to select alternate land. Accordingly, the suit property came to be allotted to Rama Daji Navale and he was called upon to take possession thereof on 16 October 1982 by the Resettlement Officer.

7) This is how the suit property which was originally allotted in the name of Digambar Kashinath Dhane came to be allotted in the name of Rama Daji Navale. The suit filed by Digambar Kashinath Dhane challenging the cancellation of allotment has been dismissed. Thus cancellation of allotment of suit property in the name of Digambar Kashinath Dhane has attained finality. Defendant Nos. 4 and 5 therefore cannot claim any ownership in respect of the suit property.

8) Faced with the difficulty of dismissal of Regular Civil Suit No.61 of 1996 thereby attaining finality to the cancellation of allotment order, Defendant Nos. 4 and 5 expected Plaintiffs to conclusively prove their title to the suit property. According to Mr. Talkute, it was incumbent upon the Plaintiffs to produce a letter of allotment in respect of the suit property,

which is the only authentic proof of ownership in the facts of the present case. Though Mr. Talkute cannot be entirely faulted for contending that the letter of allotment ought to have been produced by the Plaintiffs, I do not find any serious error on the part of the Trial Court and the first Appellate Court in recording the finding of ownership by Plaintiffs in respect of suit property by relying on two documents. The first document is in the form of a letter dated 31 March 1979 granting possession of the suit property to Plaintiffs. The second document is in the form of a Land Acquisition Register. The register carries entries of cancellation of allotment made in the name of Digambar Kashinath Dhane and allotment of the land in the name of Rama Daji Navale. Both the documents conclusively prove that Rama Daji Navale has been allotted the suit properties.

9) Reliance of Mr. Talkute on the judgments of the Apex Court in ***City Municipal Council Bhalki*** (supra) does not assist the case of the Appellants. In that judgment, the Apex Court has reiterated the settled law that Plaintiffs must prove their title independently and a decree in his favour cannot be awarded only for the reason of Defendants failing to prove their title. The Apex Court has relied on its previous judgment in ***R.VE. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr., (2003) 8 SCC 752*** in which it is held as under:

"In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title."

Thus once the Plaintiffs create a high degree of probability of title in a suit for possession, the onus shifts on the Defendants, and in the absence of

Defendants discharging the burden, the Plaintiffs are entitled to seek possession based on title. Also Mr. Talkute's reliance on the Judgment of the Apex Court in ***Ramchandra Sakharam Mahajan*** (Supra) does not take case of his clients any further. The Judgment, far from assisting the case of Appellants, actually militates against them. In para 13 of the judgment, the Apex Court held as under:

"13. The suit is for recovery of possession on the strength of title. Obviously, the burden is on the plaintiff to establish that title. No doubt in appreciating the case of title set up by the Plaintiff, the Court is also entitled to consider the rival title set up by the defendants. But the weakness of the defence or the failure of the defendants to establish the title set up by them, would not enable the plaintiff to a decree. There cannot be any demur to these propositions."

Thus in a suit for possession based on title, the Court is not prohibited from considering the rival title set up by Defendants. True it is that Defendants' failure to prove his title cannot alone be a reason to assume title in favour of Plaintiffs. However, once the Plaintiffs set up a credible case of title and the Defendants are unable to dispel the high degree of probability of title in favor of the Plaintiffs, the Court is entitled to draw presumption of title at least *qua* the Defendants.

10) In the present case, Defendant Nos. 4 and 5 have no semblance of title in the suit property since the Regular Civil Suit No.61 of 1996 instituted by them challenging cancellation of allotment has been dismissed. On the other hand, though the allotment letter itself is not produced by the Plaintiffs, they have created a high degree of probability of ownership on the strength of the possession letter and entries in the land acquisition register.

11) After considering the entire evidence on record, the Trial Court and the first Appellate Court have correctly recorded findings of fact in

which this Court is not supposed to interfere in the exercise of jurisdiction under Section 100 of the Code. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly rejected.

12) In view of rejection of Second Appeal, Interim Application No. 774 of 2024 does not survive. The same also stands disposed of.

SANDEEP V. MARNE J.