



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.68 OF 2017
WITH
CIVIL APPLICATION NO.179 OF 2017

Diliprao Madhavrao Shinde and Ors.

... Appellants.

Versus

Motriram Tukaram Pawar (since deceased),
Through LR.s. and Ors.

... Respondents.

Mr. Prafulla B. Shah i/by Mr. Kayval P. Shah, for the Appellants.

Mr. Prathamesh Bhargude a/w. Mr. Sumit Sonare, for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 19, 2024.

P. C. :

1. The original-plaintiffs are before this Court being dissatisfied by the concurrent findings of the trial Court and the Appellate Court dismissing his suit seeking declaration of ownership and injunction.
2. The Plaintiffs had filed Regular Civil Suit No.96 of 1998, seeking *inter alia* declaration that as the mortgaged money had been paid, the Plaintiffs were the owners of the suit property and for injunction from obstructing the possession of the Plaintiffs. The suit property is described as agricultural land being Gat No.258, admeasuring 3 Acres 13 Gunthas. It was contended that the suit property is the ancestral

property of the Plaintiffs acquired under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "Tenancy Act"). On 18th May, 1956 the father-in-law of the Plaintiff No.5 deceased Dinkarrao Shinde was in a need of money and loan of ₹525/- was taken from the Defendant No.1 and one Bharat Shinde. It was contended that the Defendants were not agriculturists and the possession of the suit property was never delivered to them. The said Dinkarrao Shinde repaid the loan amount and accordingly the mortgage was redeemed. During the consolidation scheme in the year 1970, the suit land and another land came to be consolidated and Gat No.481 was allotted to the Plaintiffs, whereas Survey No.170 was converted into Gat No.561 which was subsequently sold on 4th February, 1971 to third parties. It was contended that the property sold on 4th February, 1971 was also subject property of the document dated 18th May, 1956. The plaintiffs are in possession of the suit property, however, as the defendants obstructed their possession, the present suit was filed. It was further contended that as Defendants and Bharat Shinde were not agriculturists, the transaction was in contravention of Section 63 and 64 of the Tenancy Act.

3. The suit came to be resisted by the Defendants claiming that the document of 18th May, 1956 was a sale-deed pursuant to which the

names of the Defendants and Bharat Shinde was mutated in the revenue records and the possession of the land was also delivered to them. According to the Defendants, the Defendants are agriculturists and therefore the transaction is legal and valid.

4. The parties went to trial and the trial Court on appreciation of the evidence adduced by the parties held that the transaction of 18th May, 1956 was an outright sale. On the aspect of possession, it was held that the Plaintiffs have failed to prove their possession over the suit land and as such declined the relief of injunction.

5. As against the judgment of the Trial Court, Appeal was filed by the Plaintiffs. The Appellate Court re-appreciated the evidence and held that the sale-deed which is at Exhibit-92 is admittedly executed between the parties. The Appellate Court considered the contents of the document and construed the same to constitute a sale-deed. The Appellate Court also considered the 7/12 extracts which showed that from the year 1956 to 1958, the name of the Defendant and Bharat Shinde was mutated in the revenue record as possessors. The Appellate Court referred to the statement of the predecessor of the plaintiffs where he admitted that his father Dinkarrao by virtue of the registered document has transferred the suit land to the Defendant

and Bharat Shinde and also that the Mutation Entry No.2107, by which the sale of the suit land in favour of the Bharat Shinde and the Defendant came to be mutated was not challenged. The Appellate Court further considered that initially, the names of the Defendant and Bharat Shinde was mutated in the year 1997. However, the same was deleted when the information was given by the Plaintiff No.1 about the pendency of the Appeal. The Appellate Court held that there is no document to show the possession and as such declined the relief of perpetual injunction.

6. Heard Mr. Prafulla B. Shah, learned counsel for the Appellants and Mr. Prathamesh Bhargude, learned counsel for the Respondents.

7. Mr. Shah, learned counsel appearing for the Appellant would submit that there is perversity in the findings as the Courts have relied upon the averments in the plaint as admission as well as the statements made in the *Takrar* Register for coming to a conclusion that the sale-deed was genuine sale-deed. He would further submit that the Courts have mis-read the mutation entries especially when the Application filed by the Defendants to cancel the mutation entry in favour of the plaintiffs came to be rejected. As against which, the Appeal was also rejected which is not challenged by the Defendants.

He would further submit that as far as the possession is concerned, the consolidation scheme shows that the Plaintiffs are in possession which has not been challenged and that the land revenue was deposited by the Plaintiffs which has been ignored by the Courts.

8. *Per contra*, Mr. Bhargude, learned counsel appearing for the Respondent has taken this Court through the sale-deed i.e. Exhibit 92 and would contend that the contents of the sale-deed show that the same was outright purchase. Pointing out to the specific recital about the handing over the possession, he submits that the aspect of the possession has been rightly decided in favour of the Defendants by virtue of the recitals in the sale-deed as well as the mutation entries. Drawing attention of this Court to the order rejecting Exhibit 5 filed in the previous proceedings instituted by the Plaintiffs, he submits that the trial Court has specifically considered the statement of Madhavrao Shinde admitting that the ownership of the plaintiff was lost upon the execution of the deed of 1956 and that the possession was handed over.

9. In rejoinder, learned counsel for the Appellant would submit that there was an acquisition of the property for which the compensation was paid to the plaintiffs which would denote the

possession. This is countered by learned counsel for the Defendants by pointing out that out of the suit property an area of 2 Acres was acquired and handed over to the rehabilitated persons which was Gat No.481/2, whereas out of Gat No.481/1 which was under ownership of the plaintiff, the sale-deed was executed in respect of certain portion.

10. Considered the submissions and perused the record.

11. As regards the nature of the document i.e. sale-deed of 18th May, 1956, the trial Court and the Appellate Court have construed the document as an outright sale by considering the recitals contained in the document. The execution of the document is not in dispute and what is sought to be contended is that the same was a mortgage deed. Admittedly, the suit has not been filed seeking redemption of the mortgage or for a declaration that the document was a mortgage deed and the relief which was sought was that of declaration of ownership on the premise that after the mortgage money has been paid, the plaintiffs are the owners of the property. The Trial Court and the Appellate Court have considered that the pleadings about payment of mortgage money are vague and according to the evidence of the Plaintiffs, the repayment was acknowledged on the original document, which has not been produced by the Plaintiffs in support

of their case of payment of mortgage money. Further there is no document executed in favour of the mortgagor upon the payment of mortgage money. The burden was upon the Plaintiffs to prove that the deed dated 18th May, 1956 was document of mortgage and the mortgage money had been paid. The suit is not for redemption of mortgage and therefore it was incumbent upon the Plaintiffs to establish by leading cogent evidence the payment of mortgage money and acknowledgment of the extinguishment of right of mortgagee. There is no such evidence brought on record and no perversity is demonstrated from the findings of the trial Court and the Appellate Court while considering the nature of the document as an outright sale. The contention basically revolves around the aspect of the possession which according to the plaintiffs is with the plaintiffs by reference to the mutation entries recording the name of the plaintiffs under the column of *kabjedar*. Mr. Shah would contend that these mutation entries have not been rightly considered by the trial Court and the Appellate Court and as such, there is perversity in the findings. The Appellate Court while deciding the aspect of the possession has considered the mutation entry No.2107 reflected the purchase of the property by the Defendant and Bharat Shinde and that their names could not be mutated as purchasers because the

name of executant was not appearing in the column of possession.

12. It is settled that entries in the revenue records are meant for fiscal purpose. There is recital in the sale deed that the possession has been handed over and Madhavrao Shinde's statement has been recorded in the *Takrar* Register that his father had under a registered document dated 18th May, 1956 transferred the suit land to the Defendants and Bharat Shinde. Mere reliance on the mutation entries especially when the name of the Defendant and Bharat Shinde came to be deleted in the year 1997, upon the information given by the plaintiff No.1 about the pendency of the Appeal would not assist the case of the plaintiffs on the aspect of the possession. For the purpose of grant of injunction, it is necessary for the plaintiff to lead cogent evidence demonstrating that despite the execution of the sale-deed the possession of the property remained with the plaintiffs. In the present case, the Trial Court and the Appellate Court on the basis of the material have rightly appreciated the evidence on record.

13. It is well settled that in exercise of powers under Section 100 of the Code of Civil Procedure, 1908, this Court is not permitted to re-appreciate the evidence on record unless it is shown that the findings of the trial Court and the Appellate Court are based of no evidence or

wrong inference has been drawn from proved facts by applying law erroneously. It is also well settled that even erroneous findings of fact by the Appellate Court cannot be corrected in exercise of jurisdiction under Section 100 of the CPC. The Trial Court and the Appellate Court on the basis of documentary and oral evidence have held that the plaintiffs have failed to establish their possession over the suit property and declined to grant injunction.

14. Having regard to the above discussion, no substantial question of law arises in the present case. Second Appeal stands dismissed. In view of the disposal of Second Appeal, Civil/Interim Application(s) taken out in this Appeal, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]