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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 795 OF 2019
WITH
CIVIL APPLICATION NO. 1608 OF 2019**

Naglingayya Shivayya Swami ... Appellant

Vs.

Government of Maharashtra ... Respondent

Mr. Ashok B. Tajane a/w. Mr. Balaji P. Shinde and Mr. Y. G. Thorat for
the Appellant.

Mr. D. J. Haldankar, AGP for the Respondent – State.

CORAM : GAURI GODSE, J.

DATE : 16th AUGUST 2024

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees partly dismissing the plaintiff's suit in respect of the suit property described at paragraph iB of the plaint i.e. Municipal House No. 2/336 of an open plot which forms part of City Survey No. 796.

2. Learned counsel for the appellant submitted that both the courts have accepted the appellant's case on ownership of the suit property

described at paragraph 1 of the plaint i.e. Municipal House No. 2/337 which is part of City Survey No. 736. However, the plaintiff's ownership on the Municipal House No. 2/336 which is also part of the City Survey No. 736 is not accepted.

3. Learned counsel for the appellant further submits that the First Appellate Court has referred to the City Survey No. 736 and confirmed the decree of the trial court by holding that the City Survey No. 736 stands in the name of the Government.

4. Learned counsel for the appellant further submits that the documents produced on record indicates that appellant is in possession of both suit properties, however the plaintiff's claim on suit property no. iB is not accepted on the ground that there was no registered document of title produced by the plaintiff.

5. Learned counsel for the appellant relied upon the assessment extract which according to the applicant stands in the name of the original owner i.e. Laxman Pandurang Narayankar which indicates that the original owner had transferred the same in the name of the plaintiff and hence plaintiff is in possession of suit property no. iB.

6. He further submits that no evidence was adduced on behalf of the respondent to rebut the plaintiff's claim which is supported by oral as well as documentary evidence. Learned counsel for the appellant thus submitted that the First Appellate Court has erred in holding that the City Survey No. 736 stands in the name of Government and thus has erroneously dismissed the plaintiff's claim

7. He submits that there was a Court Commissioner's Report placed on record alongwith a map which clearly indicates that the plaintiff is in possession of the suit property no. iB. Learned counsel for the appellant therefore submits that the Second Appeal raises substantial questions of law on misappreciation of the documentary evidence produced by the plaintiff and the Appellate Court not taking into consideration that the evidence produced by the appellant was not rebutted by the respondent.

8. I have considered the submissions made on behalf of the appellant. Perused the papers of the Second Appeal as well as the paper book of the First Appeal. Perusal of the plaint indicates that the plaintiff has claimed declaration of ownership in respect of the property described in the plaint paragraph (1) i.e. as Municipal House No.

2/337 and a declaration that he is in lawful possession of the property described in the plaint paragraph (2), i.e. Municipal House No. 2/336 being open plot. Amendment carried out by the plaintiff indicates that a pleading was added that the suit properties were part of City Survey No. 736. Learned counsel for the appellant argued that the amendment carried out regarding suit properties being part of City Survey No. 736 is applicable to both the properties described in paragraph 1 and 2 of the plaint. He further submitted that the suit property described in paragraph 1 is referred to by both the courts as property no. iA and property described in paragraph 2 is referred to by both the courts as property no. iB.

9. A perusal of both the impugned judgments indicate that the plaintiff had produced a registered document of title in respect of the property no. iA. However, there was no document of title produced in respect of the property no. iB. Hence, both courts refused to accept ownership and possession in respect of property no. iB.

10. It is not in dispute that the plaintiff was unable to produce any document of title in respect of property no. iB. Though it was sought to be argued on behalf of the appellant there was an unregistered

document produced, there is nothing shown that the same was a valid document and that document of title was exhibited and admitted in evidence. Learned counsel for the appellant was unable to point out any document of valid transfer of title in favour of the plaintiff in respect of property iB.

11. The copies of the assessment extract relied upon by the learned counsel for the appellant refers to property described as CTS No. 2/336 which according to the plaintiff is property No. iB. A perusal of the said document indicates entry of the name of Laxman Pandurang Narayankar. Thus, even the said documents does not reflect name of the plaintiff.

12. A perusal of the reasons recorded by the First Appellate Court in paragraph 15 shows that the document produced below at Exhibit 25 includes extracts of the property card in respect of City Survey No. 736. Hence, the First Appellate Court has observed that since City Survey No. 736 stands in the name of Government, the plaintiff was unable to point out as to how Laxman Pandurang Narayankar would become owner of the property as shown in the agreement relied upon by the plaintiff.

13. Admittedly Laxman Pandurang Narayankar is not a party to the plaint nor he is examined as plaintiff's witness to support the plaintiff's case of title or possession through Laxman Pandurang Narayankar. The report of the Court Commissioner and the map relied upon by the learned counsel for the appellant is also examined by both the courts. The First Appellate Court has specifically recorded its finding in paragraph 18 of the impugned judgment thereby holding that even as per the map it shows that the plaintiff's claim of possession is on the land owned by the Government. Thus, in absence of any document of title or any valid document showing any allotment in favour of the plaintiff both the courts refused to accept the plaintiff's case in respect of title or possession with respect to the property described as property no. iB.

14. In view of the documents produced on record which were either in the name of Government or in the name of Laxman Pandurang Narayankar both the courts even refused to accept the plaintiff's claim of being in possession of property no. iB.

15. The documents sought to be relied upon by the learned counsel for the appellant which are part of the paper book of the First Appeal

nowhere indicates that the plaintiff's name was entered as owner or in possession of the suit property no. iB. Hence, in the absence of any valid document of title or any valid document of settled position, the plaintiff would not be entitled to seek any declaration or injunction as prayed, for property no. iB.

16. Both the courts have examined the oral as well as documentary evidence on record and concurrently held that plaintiff failed to prove his title of possession in the suit property no. iB.

17. I do not find any illegality or perversity in the reasons recorded by both the courts. In view of the concurrent findings of facts recorded by both the courts, the grounds raised on behalf of the appellant would not require any consideration by this court. Even otherwise, the arguments raised on behalf of the appellant do not raise any substantial questions of law. Hence, Second Appeal is dismissed.

18. In view of the dismissal of the Second Appeal, Civil Application No. 1608 of 2019 is dismissed as infructuous.

[GAURI GODSE, J.]