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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 164 OF 2024
WITH
INTERIM APPLICATION NO. 6506 OF 2024
IN
SECOND APPEAL NO. 164 OF 2024

Rajesh Yadigiri Yangandul @ Rajesh Yadagiri ... Appellant/Applicant
Yanagandul through Gal Yadigiri Ramswami
Yangandul

vs.

Sarojini Ramkrishna Mudyal @ Sarojini
Ramkrishna Mugdyam ... Respondent

Mr. Nilesh Wable, for Appellant.

CORAM : GAURI GODSE, J.

DATED : 12th JULY 2024

ORDER:

1. This Second Appeal is filed by the defendant to challenge the concurrent judgments and decrees in the suit of the plaintiff. The plaintiff's suit for declaration that the entry of the defendant's name in the revenue record by deleting the name of the plaintiff is void and illegal is decreed and the entry is cancelled. The impugned decree further directs the defendant to hand over possession of the suit property. Defendant's appeal is dismissed and the trial court's decree is confirmed.

2. Learned counsel for the appellant submits that in the earlier suit for partition between the plaintiff and her family members, the plaintiff had admitted that the suit property is sold to the defendant. He, therefore, submits that once the plaintiff had admitted that the suit property was sold in favour of the defendant, the suit for possession and declaration as filed by the plaintiff could not have been decreed.

3. Learned counsel for the appellant, therefore submits that the Second Appeal raises substantial question of law on the consideration of the plaintiff's case in the earlier suit i.e. Special Civil Suit No. 245 of 1993.

4. I have considered the submissions made by the learned counsel for the appellant. It is not in dispute that the plaintiff's husband was the original owner of the suit property. The defendant claims right in the suit property only on the basis of the entry made in the revenue record. Admittedly, the defendant has not produced on record any document of title. The case of the defendant that the plaintiff had relinquished the right in the suit property is not accepted by both the Courts. Admittedly, except the entry in the revenue record, the defendant has not produced any document to claim source of title to the suit property. Both the Courts have examined

the pleadings and evidence on record and accepted the case of the plaintiff that she is the owner of the suit property and the defendant's name was entered in the revenue record by way of misrepresentation.

5. Once the plaintiff's title is accepted and the defendant has failed to produce any valid source of title, the defendant is not entitled to retain the possession of the suit property. A perusal of the reasons recorded by both the courts also indicate that the defendant also raised a plea of perfecting title by adverse possession. However, there is a concurrent finding recorded that the defendant failed to prove his right by way of adverse possession. Even otherwise the defendant has claimed ownership on the ground that the plaintiff had sold the suit property to him. Thus, the defendant challenges the plaintiff's title. Hence, the defendant is not entitled to any declaration of title by adverse possession.

6. The argument raised on behalf of the appellant regarding the plea of the plaintiff in the earlier suit cannot be held to be a valid admission on the defendant's title. In any case, the defendant was not party to the said suit. In the present case, the defendant claims right based on the entry in the revenue record and his plea for

perfecting title by way of adverse possession. Hence, the grounds sought to be argued on behalf of the appellant on the pleadings in earlier suit cannot be examined in this Second Appeal by re-examination of the facts and the evidence on record. Both the courts have examined all the documents including the pleadings in the earlier suit, and disbelieved the defendant's case. I do not find any illegality or perversity in the findings recorded by both the courts.

7. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

8. In view of the dismissal of the Second Appeal, Interim Application is dismissed as infructuous.

(GAURI GODSE, J.)