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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 558 OF 2022
WITH
INTERIM APPLICATION NO. 16884 OF 2022
IN
SECOND APPEAL NO. 558 OF 2022**

Dashrat Narayan Salve ... Appellant/Applicant

vs.

Shalan Ramchandra Salve ... Respondent

Mr. Pandit Kasar, for Appellant.

CORAM : GAURI GODSE, J.

DATED : 11th JUNE 2024

ORDER:

1. Heard learned counsel for the appellant. The second appeal arises out of the judgment and decree passed by the First Appellate Court, allowing the appeal filed by the defendant to challenge the decree passed by the Trial Court in favour of the appellant. The Trial Court had decreed the appellant's suit for declaration that he is the owner of the suit property, and the concerned authority was directed to enter the name of the appellant in the register as he was declared

as the owner of the suit property. The said decree is reversed by the First Appellate Court.

2. Learned counsel for the appellant/plaintiff submits that the suit property is allotted to the plaintiff by the Gram panchayat by way of a resolution, which was placed on record. He submitted that the evidence on record supported the case of the appellant that he was in possession of the suit property. According to the learned counsel for the appellant, the defendant admitted that the plaintiff was in possession of the suit property, hence, in view of section 110 of the Indian Evidence Act, the burden was on the defendant to prove that the plaintiff was not the owner. He submitted that when the question of ownership was to be determined with regard to the property on which the plaintiff was admittedly in possession, the burden to prove that the plaintiff was not the owner was on the defendant, as he disputed the plaintiff's ownership. He further submitted that the oral evidence produced on record proved that the plaintiff was always in possession of the suit property. He relied upon the findings recorded by the Trial Court to support his submission that the oral evidence, coupled with the resolution passed by the Gram panchayat in favour of the plaintiff, proved that he was the owner and in possession of the suit property.

3. The learned counsel for the appellant further submitted that even if title to the property is not accepted, the plaintiff's long-standing possession was required to be accepted, and the decree to that effect could not have been reversed by the First Appellate Court. He further submitted that the Gram panchayat never disputed the plaintiff's ownership, but the same was disputed by the defendant, who claimed to be the owner and in possession based on the revenue record. He submitted that the findings on ownership and possession recorded by the Trial Court in favour of the appellant were reversed by the First Appellate Court. Hence, the plaintiff is likely to be dispossessed by the respondent, who claims to be the owner and in possession. He submitted that the First Appellate Court failed to properly appreciate the evidence on record. Hence, the appeal would require consideration for proper appreciation of the facts as well as the evidence on record. Hence, the learned counsel for the appellant submitted that the second appeal raises a substantial question of law on the respondent's burden in view of section 110 of the Indian Evidence Act.

4. I have considered the submissions made by the learned advocate for the appellant. On perusal of the judgment of the Trial Court, it reveals that the Trial Court has considered the entries in the

Gram panchayat record and the plaintiff's pleadings regarding the nature and source of his title. The Trial Court referred to the documentary evidence and the cross-examination of the witnesses examined by the plaintiff and held that the plaintiff proved that he was the owner of the suit property and that he was in possession of the same. Based on the revenue record and the record of the Gram panchayat, the Trial Court recorded that the plaintiff was the owner of the suit property. Further, by referring to the mutation entries, the Trial Court recorded conclusions in favour of the plaintiff by holding that the defendant failed to produce the documentary evidence in respect of the alleged possession of the suit property.

5. The First Appellate Court, after re-examining the facts and evidence on record, held that the copy of the resolution of the Gram panchayat relied upon by the plaintiff did not speak anything about the possession and the City Survey record relied upon by the plaintiff also did not show that the plaintiff was put in possession of the suit property. So far as the title of the property is concerned, the First Appellate Court held that the plaintiff failed to disclose the source of title over the property, and his reliance only on the resolution of the Gram panchayat was not accepted as a valid title to the suit property. The First Appellate Court has recorded the

findings, on perusal of the Gram panchayat record, to hold that even if entries with regard to the defendant's names were not properly maintained, the resolution of the Gram panchayat did not support the plaintiff's case of long-standing possession. The First Appellate Court, by examining the documentary record of the Gram panchayat and the revenue entries, recorded the findings of fact against the appellant and disbelieved the case of the appellant regarding possession as well as title. A perusal of the record shows that the list of documents relied upon by the appellant to support his title and possession is based only on the Gram panchayat resolution.

6. I do not find any substance in the argument made by the learned counsel for the appellant by relying upon section 110 of the Indian Evidence Act. The pleading and evidence, as referred to by both the Courts, does not indicate that the possession of the appellant was admitted. Hence, there was no question of the burden on the defendant to disprove the ownership of the appellant. The first appellate court is the last fact-finding court. The findings of fact recorded by the first appellate court are based on proper appreciation of pleadings and evidence. The first appellate court has disbelieved the plaintiff's claim of being in possession. Thus the argument made by the learned counsel for the appellant by relying

upon section 110 of the Indian Evidence Act would be of no assistance to the appellant's case.

7. Learned counsel for the appellant also submitted that the confirmation of the decree of the First Appellate Court would be construed to mean that the possession and ownership of the defendant are accepted. Hence, he submitted that the Second Appeal would require consideration on the point of the defendant's case of ownership and possession. The Second Appeal is to be considered to examine the plaintiffs' case for declaration of ownership and possession. Thus, the said argument also does not raise any question of law.

8. Further submissions made by the learned counsel for the appellant regarding the oral evidence would require re-appreciation of the facts and evidence, which is not permissible under section 100 of the Civil Procedure Code, 1906. The Second Appeal does not raise any substantial question of law.

9. Hence, for the reasons stated above, the Second Appeal is dismissed. In view of the dismissal of the Second Appeal, Interim Application No. 16884 of 2022 is dismissed as infructuous.

(GAURI GODSE, J.)