



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 889 OF 2017

Bhimrao Ramu Nikam

Since deceased through legal heirs and Others. ...Appellants.

Versus

Chief Officer, Ashtha Nagar Parishad and Others. ...Respondents.

Mr. Ashutosh M. Kulkarni for the appellant.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 13th February 2017 passed by the appellate Court in Regular Civil Appeal No.77 of 2011 dismissing the appeal thereby confirming the judgment of trial Court dated 24th June 2011, the original plaintiffs are before this Court.

2. Regular Civil Suit No. 4 of 2003 was instituted by the plaintiff seeking declaration of ownership in respect of the suit property bearing City Survey No. 1100 admeasuring 267.6 square metres along with the temporary structures constructed therein. The plaintiffs came with the case that the suit property is their ancestral property and that they have been in continuous possession of the suit

premises. It was further contended that previously City Survey No. 1100 and City Survey No.1076 were one property and its old numbers are 286 and 283, however at the time of inquiry, the City Survey Officer gave City Survey No. 1100 to the suit premises and City Survey No.1097 to the northern side property of the suit premises. It was contended that during survey inquiry in the year 1939-1940, an illegal order was passed mutating the name of Government of Maharashtra in the city survey record of the suit premises.

3. The suit came to be resisted by respondent no.1 - Chief Officer Ashta Nagar Parishad. It was submitted that City Survey No.1100, that is, the suit premises is of the ownership of Nagar Parishad, i.e., defendant no.1 and the entry in that respect is made in the city survey record. It was further contended that there is no challenge to this entry by the plaintiffs and the plaintiffs are not at all concerned with City Survey No. 1100 which is the property of Government of Maharashtra. It was further contended that plaintiffs are not in possession of suit premises.

4. Parties went to trial and the trial Court upon consideration of evidence dismissed the suit. As against this, Regular Civil Appeal No. 77 of 2011 was filed by the plaintiffs. The appellate Court considered the admissions given by the plaintiffs that he had no documentary

evidence to show that they have purchased the suit premises and also the admission that the plaintiffs have no concern with City Survey No. 1100. Upon consideration of evidence, the appellate Court dismissed the appeal upholding the findings of trial Court.

5. Heard Mr. Ashutosh M Kulkarni, learned counsel appearing for the appellant.

6. Mr. Kulkarni learned counsel appearing for the appellant would submit that there is perversity in the findings rendered by the courts below as there was substantial documentary evidence produced on record in the form of *phalani utara*, mutation entries, taxation receipts, etc. He submits that all these documents were sufficient to demonstrate ownership and possession of the plaintiffs over the suit property.

7. Considered the submissions and perused the record.

8. The trial Court has considered the documentary evidence brought on record and has observed that there is no document produced in respect of suit premises that is City Survey No. 1100. On the other hand, the trial Court has considered the extract of property card which showed the name of Government of Maharashtra and that in the year 1960 the Collector had given the suit premises in

possession of defendant no.1 who continues to be in possession.

9. The appellate Court re-appreciated the evidence on record. The appellate Court considered the admissions of plaintiffs that there is no documentary evidence to show the purchase of suit premises. The plaintiffs had, however, admitted that he has no knowledge when the city survey enquiry was conducted and he was not present at the time of city survey inquiry. He has further admitted that he has no concern with City Survey No. 1100 which is the suit premises and that the suit property has not been measured.

10. The appellate Court also considered that the Enquiry Register showed that notice was served on the plaintiff's predecessor and he was present at the time of inquiry and the statement of plaintiff's predecessor was recorded that he has no documentary evidence to show his ownership over City Survey No.1100 which was at that point of time Chalta No. 286. The appellate Court has also considered the documentary evidence on record such as the tax receipts, etc., and has held that none of the documents are pertaining to City Survey No. 1100. Upon consideration of the evidence brought on record by the defendants particularly the assessment extracts which showed the name of Government of Maharashtra in respect of the suit premises as also the order of the year 1960 by which the suit premises are put

in possession of defendant no.1 Municipal Council, who is in possession till date, the appellate Court dismissed the appeal.

11. From the judgment of appellate Court it is not demonstrated that there is any mis-appreciation of the evidence on record. The appellate Court has rightly considered the admissions of plaintiffs and has appreciated the evidence on record produced by both the parties. The plaintiffs have not produced any document to establish their ownership or their possession over the suit property, i.e., City Survey No.1100. As the claim of plaintiffs was of ownership of the said property, burden was upon the plaintiffs to produce necessary documentary evidence to establish the same. The tax receipts and *phalani utara* produced are also in respect of City Survey No.1097. There is no document of title produced by the plaintiffs in respect of suit property. The appellate Court has rightly considered the documentary evidence produced on record on behalf of the defendants which showed entry of the name of Government as regards the suit property and the order of the year 1960 by which defendant no.1 has been put in possession of the suit property.

12. Upon consideration of the oral and documentary evidence the appellate Court has correctly appreciated the same. In exercise of powers under section 100 of the CPC it is not permissible for this

Court to reappreciate the evidence on record and substitute its view for the view of trial Court and appellate Court unless it is demonstrated that the same suffers from any perversity. In the present case, there is no perversity demonstrated. As such no substantial question of law arises in this second appeal. The appeal stands dismissed.

13. In view of the disposal of second appeal, the civil/interim application taken out in this second appeal does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]