

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 264 OF 2023
WITH
CIVIL APPLICATION NO. 878 OF 2019

Anant Sitaram Murkar

...Appellant

Versus

Smt. Alka Dhonduram Surve And Others

...Respondents

....

Mr. N. N. Gawankar, a/w. Mr. Shreyas N. Gawankar i/b. Mr. Manas N. Gawankar, for Appellants.

Ms. Preeti Walimbe, for Respondent No.5.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 09 FEBRUARY 2024.

P.C. :

By this Appeal Appellant challenges Judgment and Decree dated 09 February 2018 passed by District Judge-2, Khed, District Ratnagiri dismissing Regular Civil Appeal No.90 of 2011 and confirming decree dated 03 October 2011 passed by 2nd Jt. Civil Judge, Jr. Division, Chiplun in Regular Civil Suit No. 99 of 2006.

2. I have heard Mr. Gawankar, the learned counsel appearing for Appellant and Ms. Walimbe, the learned counsel appearing for Respondent No.5.

3. It appears that Plaintiff filed suit for partition before the Trial Court in which she contended that the Appellant / Defendant No.1 was

given in adoption to another family and that he does not have a share in the suit property. The Trial Court however negated the said contention and held that Appellant / Defendant No.1 continued to be part of joint family when Plaintiff made an assertion about suit properties to be joint family properties, a common written statement was filed on behalf of Defendant No.1 and 2 admitting that the suit properties are joint family properties. They further averred in the written statement that they were always willing to give 1/6 share in all the suit properties to the Plaintiff. Thus, there was a specific admission in the written statement about the suit properties being joint family properties as well as willingness to give 1/6 share to the Plaintiff.

3. After the suit was decreed, the Appellant raised a ground for the first time that the suit properties at serial Nos.6 and 8 are actually his self acquired properties which he purchased vide registered sale deed dated 11 April 1978. This ground sought to be raised for the first time in Appeal memo was clearly contrary to the stand taken in the written statement. During pendency of the Appeal, Appellant attempted to amend written statement by filing Application under Order-VI, Rule 17 of the Code of Civil Procedure. The Application came to be rejected by Order 02 February 2018. That Order was not challenged by him and the same attained finality.

4. In the light of the above position, the First Appellate Court has not permitted to Appellant to withdraw the admissions given in the written statement and has proceeded to dismiss his Appeal.

5. Mr. Gawankar would invite my attention to the cross-examination of Plaintiff to demonstrate that the theory of properties at serial Nos.6 and 8 being self acquired properties of the Appellant was raised by him

even during pendency of the suit as suggestion to that effect was given to the Plaintiff in her cross-examination. Though a suggestion to that effect appears to have been given to the Plaintiff in cross-examination, the said suggestion was obviously contrary to the specific admission given in written statement.

6. Mr. Gawankar would further submit that the Appellant did not have an opportunity to challenge the order of rejection of amendment application as the order was passed on 02 February 2018 and the First Appellate Court thereafter immediately proceeded to dismiss the Appeal on 09 April 2018. Here again, the Appellant has to blame himself as the application for amendment to the written statement appears to have been filed on 03 October 2015 and the same was kept pending for 03 long years and got decided only at the stage where the Appeal was to be taken up for hearing. If the Appellant felt that amendment of the written statement was absolutely necessary, he ought to have requested First Appellate Court to adjourn the hearing of the Appeal in order to enable him to challenge the Order dated 02 December 2018. However, this course of action was also not adopted.

7. In my view, therefore First Appellate Court has rightly not permitted Appellant to withdraw admission given in the written statement. No serious error can be traced in the Order of Trial Court and First Appellate Court. No substantial question of law is involved in the Appeal. Accordingly, Appeal stands rejected. Since the Appeal is rejected, nothing survives in the Civil Application and it is also disposed of.

SANDEEP V. MARNE, J.