



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.927 OF 2016

Abdul Reshid Kasam Hodekar

...Appellant

Versus

Abbas A.Kadir Bhatkar

...Respondent

Adv. Vikas K. Singh i/b Lambay & Co.

Adv. Sachindra B. Shetye for Respondent Nos. 1& 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 27, 2024

P. C. :

1. Being dissatisfied by the judgment dated 13th July, 2016 passed by the Appellate Court in Regular Civil Appeal No. 68 of 2013 dismissing the Appeal there by confirming the dismissal of the suit vide judgment dated 29th June, 2023 of the Trial Court, the original Plaintiff is before this Court.

2. Regular Civil Suit No. 180 of 2010 was filed by the Plaintiff seeking perpetual injunction and in the alternative possession of the property bearing Survey No. 78, Hissa No. 9. It was pleaded that the property i.e. Survey No. 78, Hissa No. 9 was previously admeasuring 3Acre 32 Gunthas and was subsequently divided into three parts. The Defendants with the help of the Revenue officials illegally got entered their name on 25R land of Survey No. 78, Hissa No. 9 and separate 7/12

extract came to be prepared for 25R land bearing No. 78/9C. It was pleaded that the remaining land is admeasuring 1H 24R bearing Survey No. 78/9A and the suit property was referred to as Survey No. 78, Hissa No. 9A admeasuring 1H 24R and the area of Survey No. 78, Hissa No. 9C admeasuring 25R. The case of the Plaintiff was that the suit property was in his possession and the Defendants were not in possession of the 25R land comprised in Survey No. 78, Hissa No. 9C. It was further pleaded that by taking advantage of their names on the 7/12 extract, the Defendants are interfering with the possession of the Plaintiffs and have applied for building permission to the Grampanchayat. The Defendants also illegally got entered some entries about garage, trees and part of house on 7/12 extract of Gat No. 78/9C. As such, suit was filed against the Defendants to restrain them from interfering with the possession of the Plaintiffs and in the alternative, for possession of the suit property.

3. The suit came to be resisted by the Defendants and it was claimed that they are in possession of the suit property and claim for ownership was made on the basis of long standing possession. It was pleaded that some portion of their house is constructed on part of the suit property and there is also garage on the suit property. It was contended that there were proceedings under Section 145 of Cr.P.C. between Plaintiffs and the Defendants and the possession of the Defendants has been established in

those proceedings. That, old survey No. 78/9 was previously owned by Hodekar, Mulla & Bhatkar families but they were in separate possession of their specific land and Defendants were in possession of land which was subsequently given Hissa No. 9C.

4. Parties went to trial and the Trial Court held that the Plaintiff has failed to prove his possession in respect of the Survey No. 78, Hissa No. 9C and dismissed the suit. As against this an Appeal came to be filed which was also dismissed.

5. Heard Mr. Singh, learned counsel for the Appellant and Mr. Shetye, learned counsel for the Respondent.

6. Learned counsel for the Appellant would submit that on the aspect of possession, he had examined himself and three witnesses who have supported his case. He would submit that only on the basis of the mutation entries, which showed the name of the Defendants, the suit has been dismissed as regards the Survey No. 78, Hissa No. 9C. He submits that the substantial questions of law which arises is that the mutation entry does not confer any title on the party.

7. Considered the submissions and perused the record.

8. There is no dispute as regards the ownership in respect of Survey No. 78, Hissa No. 9A and 9B. The dispute is only in respect of Survey No. 78, Hissa No. 9C, and the suit has been filed seeking perpetual

injunction restraining the Defendants from interfering with the possession of the Plaintiff over the said Survey No. 78, Hissa No. 9C. It was therefore necessary for the Plaintiff to bring adequate evidence on record to show his possession over Survey No. 78 Hissa No. 9C. The judgment of the Trial Court records that the Plaintiff has produced the Bot Khat which showed the name of the predecessor of Plaintiff in respect of Survey no. 78/9. The Trial Court rightly considered that the entries are of the year 1907 and subsequently there are various proceedings which have taken place and the name of the Defendants have been mutated in the revenue records. The documentary evidence was considered by the Court i.e. 7/12 extract which showed name of Defendants in 7/12 extract, entry about trees and some portion of House No. 288, M. E. No. 1888 mutating name of Defendants in respect of suit property, judgments passed in R.T.S. Appeal, Revenue Commissioner deciding in favour of Defendants and confirming M.E. No. 1888. The Trial Court also considered the judgment in proceedings under Section 145 of Cr.P.C. where the Executive Magistrate has held that the possession was with the Defendants. In proceedings under Section 145 of Cr.P.C. injunction order is passed against the Plaintiff restraining him from interfering with the possession of the Defendants without the process of law. The Trial Court as well as the Appellate Court has rightly appreciated the evidence

on record on aspect of possession that long standing entries have presumptive value.

9. In the present case, relief of injunction was sought on the basis of possession. The Trial Court while deciding the issue of possession has framed the incidental issue as regards the ownership. The submission of learned counsel would have weightage in event the suit was for declaration of ownership. It is not disputed that the name of the Defendants appears in the mutation entries which have presumptive value under Section 157 of MLRC Act. The mutation entries which are revenue records support the case of the Defendant's long standing possession and no fault can be found with the Courts in accepting the revenue entries in support of the possession of the Defendants over the suit property. The burden was upon the Plaintiff to establish his possession which the Trial Court as well as the Appellate Court has held that the Plaintiff has failed to do.

10. As regards the witnesses which have been examined by the Plaintiff, the Trial Court has held that the witness- Anant Pandurang Bhatkar in his cross-examination has admitted that the property being Survey No. 78, Hissa No. 9C was earlier in the possession of the Plaintiffs, however, subsequently, the same is in the possession of the Defendants. He has admitted that on suit property there is a garage and shed, however, he has

deposed that he was not aware as to whether the same belongs to the Defendant. As regards the other witnesses, Abbas Mohammed Mulla , the Trial Court has noted that, in the cross-examination he has admitted about the injunction order and also that he and his mother was party to RTS proceedings.

11. Based on the documentary evidence which has been come on record, the Trial Court has held that the possession of the Plaintiff is only in respect of Survey No. 78, Hissa No. 9A and not in respect of Survey No. 78, Hissa No. 9C. The Appellate Court has re-appreciated the evidence and has upheld the findings of the Trial Court. In exercise of powers under Section 100 of CPC, it is not permissible to this Court to re-appreciate the evidence on record and come to a different finding unless it is demonstrated that there is perversity in the findings. In the present case, on the basis of the oral and the documentary evidence, the Trial Court and the Appellate Court has rendered findings on the aspect of possession of of the Defendant in respect of Survey No. 78, Hissa No. 9C. As regards the question of law raised as to whether the mutation of the property create or extinguishes any title, it needs to be noted that the suit is not filed for declaration of ownership but for injunction based for possession. The mutation entries can be taken into consideration for the purpose of deciding the aspect of possession which has been rightly done

in the present case. As such, no substantial question of law arises in the Second Appeal.

12. Second Appeal stands dismissed.

(SHARMILA U. DESHMUKH, J.)