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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 133 OF 2016
WITH
CIVIL APPLICATION NO. 207 OF 2016

Shri Shripati Tukaram Patil ... Appellants
(deceased through LRs)

Vs.

Shri Prabhakar Shripatrao ... Respondents
Nale and Others

Mr. Abhijit M. Adagule for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 18th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the heirs and legal representatives of defendant no. 2 challenging the concurrent judgments and decrees granting partition and separate possession.

2. Defendant no. 2 is the purchaser from defendant no. 1. Learned counsel for the appellants submits that the suit property was originally owned by Govindrao. He submits that by oral partition Govindrao transferred the suit property to the share of

defendant no. 1—Madhukar and to his grandson Suresh. He submits that Suresh is son of Dattaji who was Govindrao's son.

3. Learned counsel for the appellants further submits that Mutation Entry no. 4651 was effected to record oral partition by Govindrao. According to the learned counsel for the appellants pursuant to the Mutation Entry no. 4651, Madhukar - defendant no. 1 became owner of the suit property and thus validly executed the sale deed in favour of defendant no. 2. He further submits that plaintiff no.1 in his cross examination admitted that he did not produce any document to show that there was partition between the three sons of Govindrao. He therefore submits that in view of the admission given by plaintiff no. 1 in his cross examination the suit property cannot be accepted as the property exclusively belonging to Shripati. He thus submits that if the partition amongst the three sons of Govindrao is disputed, the plaintiffs would not be entitled to seek partition and separate possession through Shripati. He therefore submits that in view of the admission given by plaintiff no. 1 in his cross examination the issue regarding non-joinder of the necessary parties was required to be considered by both the courts. He submits that in the absence of any partition amongst the three sons of Govindrao, the suit for partition was bad for non-joinder of

the other two sons of Dattaji and Shamrao. Learned counsel for the appellants submits that the second appeal would require consideration as the ground of non-joinder of necessary parties raises substantial question of law.

4. He further submits that by way of Mutation Entry No. 4651 defendant no. 1 became the owner of the suit property. He submits that Mutation Entry No. 4651 was never challenged by the plaintiffs. Hence, the issue regarding title of the suit property transferred to defendant no. 1 by way of undisputed Mutation Entry No. 4651 would also raise substantial question of law.

5. To consider the submissions made on behalf of the appellants I have perused both the judgments and the additional compilation containing pleadings and evidence. The suit is filed by other sons and daughter of Shripati against defendant no. 1 i.e. Madhukar, another son of Shripati, claiming partition and separate possession on the ground that the suit property belongs to Shripati. A perusal of the pleadings of defendant no. 1 nowhere indicates that there was any dispute raised that the suit property did not belong to Shripati.

6. Learned counsel for the appellants relied upon paragraph 12 of the written statement filed by defendant no.1. I have perused the

written statement. Defendant no. 1 claims to be exclusive owner of the suit property based on the Mutation Entry no. 4561. A perusal of the written statement of defendant no. 1 does not indicate that there was any dispute raised on the plaintiffs' contention that the suit property belonged to Shripati. The written statement disputes the plaintiffs' claim for partition and separate possession on the ground that defendant no. 1 is exclusive owner based upon Mutation Entry no. 4651. Except for the reliance placed on the mutation entry there is no pleading about transfer of the title in favour of defendant no. 1 by way of any valid document of transfer. In view of the rival pleadings the issue regarding partition between three sons of Govindrao did not arise for any consideration in the trial court. Hence, there was no issue framed on the partition between the three sons of Govindrao.

7. I have perused the cross examination of plaintiff no. 1. The admission by plaintiff no. 1 only indicates that no document was produced to show that there was partition between the three sons of Govindrao. Based on the rival pleadings there was no issue framed regarding non-joinder of necessary parties or regarding partition between the three sons of Govindrao. Hence, a stay admission given by plaintiff no. 1 in the cross examination would not indicate

that plaintiff no. 1 admitted that there was no partition between the three sons of Govindrao. Hence, I do not find any substance in the argument raised on behalf of the appellants that the admission given by the plaintiffs in the cross examination would indicate that there was no partition amongst three sons of Govindrao and therefore the suit was bad for non-joinder of the other two sons of Govindrao.

8. The mutation entry relied upon by defendant nos. 1 and 2 to claim exclusive ownership does not refer to execution of any valid document for transferring exclusive right in favour of defendant no.1. Thus, both the courts have rightly disbelieved defendant no. 1's pleadings regarding exclusive ownership in the absence of any execution of title document. It is a well settled principle of law that the mutation entry has only presumptive value and thus in the absence of any document of title both the courts have rightly refused to accept the exclusive ownership claimed by defendant no.1.

9. I have also perused Mutation Entry no. 4651. The mutation entry refers to only oral partition by Govindrao. The mutation entry does not refer to any title document. Thus, even the contents of the mutation entry does not indicate any right, title or interest

transferred to defendant no. 1.

10. In view of the aforesaid facts the argument raised on behalf of the appellants regarding non-joinder of necessary parties, would not require any consideration by this court. I do not find any illegality or perversity in the reasons recorded by both the courts

11. By the impugned decree a declaration is granted that the sale deed executed in favour of defendant no. 2 would not bind the shares of the plaintiffs. There is no reason to find any fault in the impugned decree.

12. The second appeal does not raise any substantial question of law. Hence second appeal is dismissed.

13. In view of the dismissal of the second appeal pending applications are disposed of as infructuous.

[GAURI GODSE, J.]