

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.350 OF 2017
WITH
CIVIL APPLICATION NO.1434 OF 2017
IN
SECOND APPEAL NO.350 OF 2017.

Laxman Yashwant Gawali

...Appellant/
Applicant

Versus

Uday Ramlinga Kore & Anr.

...Respondents

Mr. S. S. Patwardhan for the Appellant/Applicant.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : JANUARY 24, 2024

P. C. :

1. Being dissatisfied with the Judgment dated 14th September, 2016 by which the Regular Civil Appeal filed by the original Plaintiff came to be dismissed confirming the findings of the Trial Court in RCS No. 362 of 2002, the original Plaintiff is before this Court.

2. RCS No. 362 of 2002 was filed claiming pre-emption rights in respect of the suit property stated in paragraph No. 1a and 1b of the plaint. The case of the Plaintiff is that the Plaintiff and Defendant No. 2

are full blood brothers. That suit property 1a was owned and in possession of the Plaintiff and Defendant No. 2. That it was ancestral and joint property. That suit property described in paragraph 1b has been sold by the Defendant No. 2 to the Defendant No. 1 by registered sale deed dated 11th November, 2002. The Plaintiff claimed that as per Hindu Succession Act, he has preferential right to purchase the share of Defendant No. 2.

3. The Defendant No. 1 resisted the suit and contended that the suit property is not the joint family property of the Plaintiff and Defendant No. 2. That the entire consideration was paid by Defendant No. 2 and name of the Plaintiff was incorporated out of love and affection. That there was a partition between the Plaintiff and Defendant No. 2 on 15th May, 2000. That on the date of the sale deed dated 11th November, 2002, the Defendant No. 1 was put in peaceful possession of the suit property.

4. Defendant No. 2 filed his written statement and pleaded that Gat No. 1042 was the original ancestral property and owned by Laxman Vishnu Mane Koli, Baburao Vishnu Mane Koli and Ramchandra Vishnu Mane Koli. That said property was purchased by him on 17th August, 1982 by registered sale deed and out of love and affection, the name of the Plaintiff was included. That on 15th May, 2000, a registered partition deed was entered into between the Plaintiff and Defendant No. 2. That

the Defendant No. 2 wanted to purchase certain property and therefore had asked to the Plaintiff to purchase the suit property in presence of his mother. However, the Plaintiff showed his unwillingness and as such, the property were sold to Defendant No. 1.

5. The parties went to trial and the Trial Court negated all the issues including the issue as to whether the suit land is the joint family property. As against this the Plaintiff filed Regular Civil Appeal No. 280 of 2010 which came to be rejected.

6. Heard Mr. Patwardhan, learned counsel for the Appellant.

7. Learned counsel for the Appellant submits that the substantial question arising in this case is that the right of pre-emption was available to the Appellant by virtue of Section 22 of the Hindu Succession Act and he was ready and willing to purchase the property. He submits that despite the willingness of the Plaintiff to purchase the property the property has been sold to the Defendant No. 1.

8. Considered the submission and perused the record.

9. The Appellate Court had framed a specific issue as regards the nature of suit property. The Appellate Court noted that there was a registered partition deed which was produced on record at Exhibit 58 which was produced from the custody of the Plaintiff. The Appellate Court considered that although the Plaintiff was in know of the

Registered partition deed there was no reference to it in the pleadings. The Appellate Court on consideration of registered partition deed held that the deed discloses that partition is not only of ancestral property but also property purchased by both the brothers.

10. The Appellate court on the basis of the documentary evidence which has come on record has rightly held that the suit property is not ancestral property. Considering the partition deed, the logical consequence which follows has been rightly noted by the Appellate Court that the provisions of Section 22 of the Hindu Succession Act will not apply to the benefit of the Plaintiff subsequent to the partition of the properties. The reasoning of the Appellate Court is based on the settled position of law and it cannot be said that there is any perversity in the findings.

11. In view of the above, no substantial questions of law arises in the present case. There has been a proper appreciation of the evidence by the Appellate court. The Appeal is without merits and stand dismissed.

12. In view of dismissal of Second Appeal, nothing survives for consideration in the Civil Application and the same is stands disposed of as such.

(SHARMILA U. DESHMUKH, J.)