



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.784 OF 2016
WITH
CIVIL APPLICATION NO.1408 OF 2014

Manohar Shivram Gawade

...Appellant.
Applicant

Versus

Laxman Shankar Madane
(decd.thr.heirs)

Tulsabai Laxman Madane And Others

...Respondents.

*Adv. Tushar Sonawane i/b Adv. Prashant S. Hagare for the
Appellant/Applicant.*
Adv. Rahul s. Kadam for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 13, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 10th July, 2013 passed by the Appellate Court in Regular Civil Appeal No. 16/2010 dismissing the Appeal thereby confirming the dismissal of the suit by the judgment of the Trial Court dated 23rd November, 2009, the original Plaintiff is before this Court.

2. For the sake of convenience the parties are referred by their status before the Trial Court.

3. Special Civil Suit No. 31 of 2005 was instituted by the Plaintiff seeking specific performance of agreement of sale dated 28th April, 1995 and 29th December, 2000. The Plaintiff came with the case that the suit land Gat No. 2710/4 admeasuring 6H- 40Are described in paragraph 1-A of the plaint and new Gat No. 1641/4 having eastern side area 2H- 13Are described in paragraph 1-B of the plaint are the ancestral and joint family properties of Defendant Nos. 1 , 2 and deceased Zumbar who are full blood brothers. Out of legal necessity, the Defendant Nos. 1 and 2 and Zumbar decided to sell land admeasuring 4H out of Gat No. 2710/4 by an agreement of sale dated 28th April, 1995 and possession was transferred. It is further contended that the Defendant No. 1 was in need of money for his household expenses and repayment of loans and therefore decided to sell his undivided share admeasuring 2H-13Are for a total consideration of Rs. 55,000/- and the Defendant No. 1 agreed to bring the necessary prior permission for the sale deed. On 29th December, 2000, Defendant No. 1 purchased the stamp paper and the agreement was reduced in writing and the possession of the land was delivered which was recorded by a separate receipt. It was contended that the Plaintiff paid the purchase price and nothing remained to be paid. It was contended that after execution of agreements of sale, Plaintiff irrigated the land and cultivated the suit land.

4. Defendant Nos. 3 and 6 resisted the suit denying that there was any sale in favour of the Plaintiff by the Defendant No. 1, 2 and deceased Zumbar or that earnest money was paid on 28th April, 1995 in presence of panchas. It was contended that the entire suit property was in joint possession and ownership of Defendant Nos. 1, 2 and deceased Zumbar and was never partitioned. It was contended that the Plaintiff has procured bogus document. The entire sale transaction was denied by the Defendants. The legal heirs of the deceased Defendant No. 1 denied the sale transaction and contended that the suit property was in their joint possession and ownership. Defendant Nos. 1A to 1C contended that the Plaintiff had deceived the deceased Zumbar and got executed false and bogus document under influence of liquor. It was contended that the deceased Defendant No. 1 was addicted to liquor and there was no transaction of sale and that the Plaintiff got the thumb mark of the deceased Laxman on the stamp paper under the influence of liquor.

5. The parties went to trial and the Trial Court negated the issue as regards the execution of the agreement of sale dated 29th December, 2000. The issue of the thumb impression of Laxman being obtained under the influence of liquor and deception converting into an agreement and Power of Attorney was answered in the affirmative

and the suit was dismissed.

6. The judgment of the Trial Court was challenged vide RCA No. 16 of 2010. The Appellate Court re-appreciated the evidence and by judgment of 10th July, 2013 dismissed the Appeal.

7. Heard Mr. Tushar Sonawane, learned counsel for the Appellant and Mr. Rahul Kadam, learned counsel for the Respondents.

8. Learned counsel for the Appellant would submit that the submissions are confined only in respect of property described as paragraph 1-B pertaining to the agreement of sale of 29th December, 2000 executed by deceased Laxman in favour of the Plaintiff in respect of old Gat No. 1641/4 and new Gat No. 2710/4. He submits that although in the written statement the case of fraud was pleaded, there is no issue of fraud framed by the Trial Court. He would further submit that the evidence adduced by the Plaintiff in respect of possession by examining one Rama Laxman Waghmare has been disregarded by the Trial Court by holding that he is an interested witness being the friend of the Plaintiff. He would further submit that the findings of the Trial Court on the deception alleged by the Defendant Nos. 1A and 1C suffers from perversity. He submits that the evidence on record that in particular the possession receipt at

Exhibit 97 establishes the possession of the Plaintiff over the suit property. He submits that the substantial question of law arising is the perversity in the findings of the Trial Court and the Appellate Court.

9. Considered the submission and perused the record.

10. As submitted by learned counsel for the Appellant, the arguments are confined only in respect of the sale-deed executed by Laxman in respect of property bearing new Gat No. 2710/4 admeasuring 2H- 13Are. The Trial Court had framed the specific issue as to whether the Plaintiff prove the execution of the agreement of sale dated 29th December, 2000 and also the burden was cast upon the Defendant Nos. 1A and 1C to prove that the Plaintiff had obtained the thumb impression of late Laxman under the influence of liquor and deception and had thereafter utilized the document as an agreement and Power of Attorney. The Trial Court considered that old Gat No. 2710/4 admeasured 6H- 4Are and by agreement dated 28th April, 1995 Defendant Nos. 1, 2 and deceased Zumbar is stated to have sold 4H- 0Are land. As there was no partition, Laxman alone could not have executed agreement for sale in favour of Plaintiff. The Trial Court upon consideration of the comparative areas in both the sale deeds held that there is no explanation in respect of the remaining area of 27R out of total land area 6H- 40Are as the agreement of the year

2000 pertains to 2H- 13Are land. The Trial Court held that description of suit property 1B was not correct. The Trial Court further held that at the time of execution of agreement for sale, the Defendant Nos. 1A to 1C were major and they are not party to the agreement. The Trial Court on basis of evidence held that there was no agreement of sale between Plaintiff and Laxman. The Trial Court held that the Plaintiff had failed to examine both the attesting witnesses. Considering the evidence which had come on record, the Trial Court held that the Plaintiff had failed to prove the execution of agreement of sale by Defendant No. 1 and that the evidence established the deception practiced on the Defendant No. 1 Laxman by the Plaintiff.

11. As regards the issue of possession, the Trial Court disregarded the evidence of PW3 Rama Laxman Waghmare as an interested witness. The Trial Court also disregarded the possession receipt as the agreement for sale did not have any recital as regards the delivery of possession and there is no explanation as to why a separate document of possession came to be prepared. The Appellate Court on re-appreciation of the evidence as regards the aspect of possession has held that PW3 Rama during the cross-examination has admitted that he cannot tell the boundaries of the suit land and has further admitted that he is the friend of the Appellant. More importantly, the

Appellate Court considered the admission of the Plaintiff that Defendant Nos. 1A to 1C are in possession of the suit land. In view of the categorical admission of Plaintiff as regards possession which has come on record, the Appellate court rightly appreciated the evidence on issue of possession and upheld the findings of the Trial Court.

12. Based on the evidence which had come on record, the Trial Court as well as the Appellate Court has held that the execution of the agreement for sale was not proved by the Plaintiff. Admittedly, Defendant Nos. 1A to 1C were major at the time of execution for the agreement and had a right in the suit property as the same was the ancestral property and their signatures were not obtained on the sale-deed for which there is no explanation. Even in respect of possession, considering the admission of the Plaintiff observed in the judgment of the Appellate Court that the Defendant Nos. 1A to 1C are in possession, the execution of the possession receipt at Exhibit 97 as well as the evidence of the PW2 Rama Laxman Waghmare will not assist the case of the Plaintiff. In any event, if it is the case of the Plaintiff that he is in possession of the property, the remedy of the Defendants will be to file a suit for recovery of possession.

13. From the evidence on record, no perversity in the findings has been demonstrated. It is well settled that in exercise of jurisdiction

under section 100 of the CPC it is impermissible for this Court to re-appreciate the evidence on record and come to a different conclusion even if the findings of the Trial Court and the Appellate Court are erroneous finding, unless it is demonstrated that the same is based on no evidence or on incorrect application of law to the evidence on record. No such case has been demonstrated. As such no substantial question of law arises. Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]

Harish

Signed by: Harish V. Chaudhari

Designation: PA To Honourable Judge

Date: 18/03/2024 17:38:53