



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 85 OF 2017

Late Shri. Govind Parvati Shelar

...Appellant.

Versus

Late Shravan Parvati Shelar and Others.

...Respondents.

Ms. Saima Ansari for the appellant.

Mr. Ritvik Joshi, Mr. Ojas Gavri i/b Mr. Niranjana Mogre for respondent no. 1a to 1e.

Coram : Sharmila U. Deshmukh, J.

Date : February 22, 2024.

P. C. :

1. Being dissatisfied by the judgment and order dated 29th October 2013 passed by the appellate Court, the original defendants are before this Court. By the impugned judgment, the appeal has been dismissed thereby confirming the judgment and decree dated 26th February 2008 passed by the trial Court in RCS No. 1199 of 2002. For the sake of convenience, the parties are referred to by their status before the trial Court.

2. The plaintiff instituted the suit for declaration of ownership, perpetual injunction and mandatory injunction to vacate the premises which was a tenement being House No.55 situated within Dr.

Babasaheb Ambedkar Co-operative Housing Society. The case of plaintiff is that the suit property has open land on the front side and rear side of the house. That, prior to allotment of house, the plaintiff along with his parents and defendants was residing in the rented house. That, defendant no.1 was unemployed and the husband of defendant no.2 was removed from service and was also unemployed. It is pleaded that after the plaintiff came to reside in House No.55 with his parents, the defendants were given temporary shelter. As the user by defendants was permissive, the defendants upon being called upon to vacate the suit premises, failed to do so. It is pleaded that the plaintiff is the member of society and all loan installments in respect of the suit property were paid by the plaintiff as also all the outgoings.

3. Defendant no.1 resisted the suit contending that the plaintiff is not the sole owner of suit property and the defendants have an equal right in the suit property. It is contended that the plaintiff was in government service and only for convenience, his name was recorded as owner of the suit property. A plea of adverse possession is also taken by defendant no.1. As regards defendant no.2, it is pleaded that the property is the joint family property and the plaintiff and defendants have equal share.

4. The parties went to trial and the trial Court upon consideration of oral and documentary evidence, partly decreed the suit rejecting the prayer for declaration of ownership and granted the mandatory injunction directing the defendants to vacate the house. As against this, Appeal No.395 of 2008 was preferred. The appellate Court noted that documentary evidence shows that the application for membership of society was in the name of plaintiff so also the payment of loan installment was in the name of plaintiff and payment was made by the plaintiff. The appellate Court also noted various payments in respect of outgoings of the suit property being made by the plaintiff. The appellate Court noted that the admitted position is that the plaintiff was in government service and therefore the source of income is established and on the other hand there is no documentary evidence produced by the defendants to show that there was any contribution by the defendants towards the purchase of suit property or that the suit property was the joint family property. The appeal therefore came to be dismissed.

5. Heard Ms. Ansari, learned counsel appearing for the appellant and Mr. Joshi, learned counsel appearing for the respondent.

6. Learned counsel appearing for the appellant would submit that the residence of parties together would indicate that it was a joint

Hindu family property. She would further submit that as it was joint Hindu family property, the plaintiff and defendants have share in the suit property.

7. Considered the submissions and perused the record.

8. It is settled that only because the parties are residing together, there is no presumption that the properties are also joint family properties. It is necessary for the party asserting that the property is the joint family property to establish the nucleus from which the suit property was purchased and it is only upon such evidence being produced, then the burden shifts upon the party asserting that the property is his self acquired property to prove the same.

9. In the present case, the burden has not been discharged by the defendant. What can be inferred from the evidence is that the membership of society is in the name of plaintiff, the payments have been made by the plaintiff at the time of purchase of property as well as all the outgoings of property are paid by the plaintiff. It is therefore clear that the defendants' entry is permissive user and as such upon permission being withdrawn it is incumbent upon the defendants to remove themselves from the property. As there is no evidence as regards the joint family property, the defendants have no

right to remain in the suit property.

10. Learned counsel appearing for the respondent informs this Court that the decree has already been executed.

11. In the light of above discussion, no substantial question of law arises in the present case. Appeal is dismissed.

12. In view of the disposal of second appeal, civil/interim application(s) taken out in this appeal, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]