

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.814 OF 2016
WITH
CIVIL APPLICATION NO.1607 OF 2016

Anjali Atmaram Phadke (SI Nce Deceased Thr. Lr) And

Ors.

...Appellants

Versus

Suhas Balkrishna Khot And Ors.

...Respondents

Mr. Vijay Gharat for the Appellants.

Mr. Kuldeep Patil a/w. Ms. Saili N. Dhuru, Ms. Sampada S. Patil for
Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 12th MARCH, 2024.

P. C. :

1. Being dissatisfied with the judgment dated 21st October 2015 passed by the Appellate Court dismissing the appeal thereby upholding the judgment of the Trial Court dated 25th June 2007 passed in RCS No.70/2001, the original defendants Nos.1/1 to 1/4 are before this Court. For sake of convenience parties are referred to by their status before the Trial Court.

2. Regular Civil Suit No. 70/2001 was instituted by the plaintiffs seeking a declaration as regards the ownership of the suit

property as well as for perpetual injunction.

3. The suit property is land admeasuring 0.13 R bearing survey No.123 Hissa No.A/2 on which a building by name “Hotel Shreyash” is standing. The suit was preferred by the plaintiffs against the married sisters and mother contending that their father Balkrishna and plaintiff No.1 were running a hotel and had thereafter formed a partnership firm. On 2nd October 1982 their father viz., Balkrishna and plaintiff Nos.1 and 2 and defendant No.3 entered into a partnership deed in the name of M/s. B. G. Khot and Sons. Late Balkrishna purchased the property on 5th October 1985. Clause 6 of the partnership deed dated 2nd October 1982 provides that any property purchased in the name of any of the partners shall be treated as property of the firm though standing in the name of one or two partners of the firm. The suit property was purchased for the purpose of the business of partnership firm and on the said property a hotel was run by partners in the name and style of “Hotel Shreyash”. The partnership firm was dissolved on 10th December 1992 and the deed of dissolution provides that the suit property be given to plaintiff No.1 only. It was contended that the plaintiff No.1 is enjoying the suit property and is the exclusive owner and in possession of the suit property. Late Balkrishna expired on 31st March 1993 and by virtue of mutation entry

No.5711, the names of the plaintiffs and the defendants was entered in the suit property. It was contended that although it was assured by the defendants that they would delete their names subsequently they started claiming their right in the suit property constraining the plaintiffs to file suit for declaration and perpetual injunction.

4. The suit was resisted only by the defendant No.1 contending that the property was purchased by late Balkrishna for his own business and “Hotel Shreyash” was constructed by late Balkrishna. After the demise of Balkrishna the name of plaintiffs and the defendants came to be entered into revenue record and they had legal right to a share in the suit property.

5. Parties went to trial and the Trial Court on the basis of evidence dismissed the suit as against which appeal came to be filed.

6. The Appellate Court considered that the sale deed in respect of the suit property showed that the entire purchase price was paid by late Balkrishna and held that the property was the separate property of late Balkrishna. The Appellate Court held that there is an admission of plaintiff No.1 that after the purchase of the suit property by his father the

hotel was constructed and it was late Balkrishna who had obtained NA permission in respect of the suit property. The Appellate Court considered the evidence adduced on behalf of the contesting defendant which showed that the witness had knowledge that both his grandfather and the plaintiff No.1 were doing hotel business. The Appellate Court held that his oral evidence was based on hearsay evidence.

7. The Appellate Court considered the documentary evidence in the form of partnership deed which showed the recital that the partnership has come into existence to conduct hotel and lodging business after acquiring property on ownership basis or rental basis. Clause 6 of the partnership deed provided that such premises purchased by the firm or acquired by the firm in the name of any of the partners shall be treated as property of the firm though it was held in the name of partners. The Appellate Court considered that after the property was acquired the same was being run by Balkrishna and plaintiff No.1 for the purpose of running hotel business. The Appellate Court held that the property being separate property of late Balkrishna, he was entitled to deal with the property as per his own wish during his life time. The partnership deed was dissolved on 10th December 1992 and while dissolving the partnership deed late Balkrishna consented that plaintiff No.1 would be

the sole owner and that the signatures of the partners are found at Exhibit 53 and 54. The Appellate Court negated the right of defendant in the suit property based on the entries by holding that the revenue records are not documents of title.

8. Heard Mr. Vijay Gharat for the appellants and Mr. Kuldeep Patil for respondent No.1.

9. Mr. Gharat, learned counsel for the appellant submit that the property was the exclusive property of late Balkrishna and by virtue of mutation entry the names of the plaintiffs and defendants were entered in the revenue records. According to learned counsel for the appellant as the partnership firm was not a registered partnership firm the bar of Section 69 of the Partnership Act would come into play and plaintiffs are not entitled to file any Suit seeking any rights under the partnership deed.

10. Considered the submissions and perused the records.

11. Undisputed position is that the suit property was purchased by late Balkrishna in his own name pursuant to which the business of hotel was being carried out by Balkrishna and plaintiff No.1 in the name

and style of “Hotel Shreyash”. The business was carried out under the aegis of the partnership deed which has been brought on record. The object of the partnership deed which is evident from the judgment of the Appellate Court is that the same has come into existence for the purpose of conducting hotel and lodging business after acquiring the property on ownership basis. What is of importance is clause 6 of the partnership Deed which provides that such premises purchased by the firm or acquired by the firm in the name of any of the partners shall be treated as property of the firm. Admittedly, the property was purchased by Balkrishna on 5th October 1985 after the formation of partnership deed. The property was used for carrying on business of the firm and effect will have to be given to Clause 6 of the partnership deed. Upon the dissolution of the firm by the deed of dissolution dated 10th December 1992 during the life time of Balkrishna he had consented that the plaintiff No.1 would be the sole owner of the suit property. The Appellate Court has noted the said fact based on the documentary evidence which is marked at Exhibit 53 and 54 i.e. partnership deed as well as deed of dissolution of partnership. In view of the fact that late Balkrishna during his life time has consented in the deed of dissolution that the property will be the sole property of plaintiff No.1, the Appellate Court was right in holding that the plaintiff No.1 is the sole owner of the property. It is a

settled position that the revenue records are not documents of title and are only for fiscal purpose. The documentary evidence which has come on record in the form of the partnership deed as well as dissolution deed would indicate that the property has been given to plaintiff No.1 under the deed of dissolution. Admittedly, the plaintiff No.1 was partner of the partnership firm and upon dissolution has become sole owner of the property.

12. As regards the issue that there is bar under Section 69 of Indian Partnership Act, 1932 the provisions of Section 69 provides that no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any partner unless the firm is registered. In the present case the partnership is already dissolved in the year 1992 and what has been claimed is a declaration of ownership of the suit property on the basis that late Balkrishna had consented in the deed of dissolution that the property would be given to plaintiff No.1. The suit has not been filed for enforcing any right arising out of contract nor is filed by plaintiffs in capacity as partner of the firm. The Defendant Nos.1 and 2 are admittedly not partners in the firm. Thus the bar contained under Section 69 of the Partnership Act will not be attracted in the

present case.

13. In the light of the above, no substantial question of law arises in the present case. There are concurrent findings of the Trial Court and Appellate Court and it is impermissible for this Court in exercise of powers under Section 100 of CPC to re-appreciate the evidence unless perversity is demonstrated. Appeal stands dismissed. In view of above, Civil Application does not survive and is accordingly disposed of.

(SHARMILA U. DESHMUKH, J.)