

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.498 OF 2016
WITH
CIVIL APPLICATION NO.1380 OF 2015

Nivrutti Punja Lonare (Since Decd. Thr. Legal
heirs)

....Appellant

Versus

Ashok Mahadu Lonare and Ors.

....Respondents

Mr. Shubham Jangam i/b Mr. Girish R. Agrawal for the Appellant.
Mr. Swapnil Mhatre Respondent Nos.1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : 6th MARCH, 2024.

P. C. :

1. Being dissatisfied by judgment dated 10th September 2014 passed in Civil Appeal No.359 of 2002 dismissing the appeal thereby upholding the judgment dated 23rd August 2002 passed in Regular Civil Suit No.167/1987, the original defendant No.1 is before this Court.

2. Regular Civil Suit No.187 of 1987 was filed by the plaintiff for possession of the suit land i.e. land admeasuring 21 R bearing Survey No.847 New Survey No.11/4. The plaintiff came with the case that in respect of the suit land as well as the other properties, compromise deed was arrived at in Court proceedings and partition was effected. That as per

the said partition the plaintiff had received 2/3rd share i.e. the suit property being 21 R land and was in actual possession and was cultivating the said agricultural land. It was contended that as per the said compromise the name of the plaintiff was mutated in the revenue records. The cause of action is stated to be the forcible possession taken by the defendant prior to three years on the basis of possession entry by the defendants with an intention to grab the 2/3rd share of the plaintiff.

3. The defendant resisted the Suit contending that the suit property came to the share of defendant No.1 father during the compromise and was in his possession since 1972-1973 and thereafter in the possession of Defendant No.1. The entry of the plaintiff's father's name in the revenue record was claimed to be wrongly mutated which was duly corrected by defendant No.1's father.

4. The parties went to the trial. The Trial Court on the basis of evidence held that the suit property came to the share of the plaintiff during the partition and as the suit land was now in possession of the defendant, it can be concluded that forcible possession of the land has been taken. The Trial Court decreed the suit directing the defendant No.1 to handover possession of the suit property and for payment of

Rs.10,500/- as *mesne* profits and for further inquiry into *mesne* profit under Order 20 Rule 12 (1)(c) of CPC from the date of institution of suit till giving of possession of the suit property. As against this, Civil Appeal No.359/2002 was filed by defendant No.1. The Appellate Court re-appreciated the evidence which has come on record and dismissed the appeal.

5. Heard Mr. Shubham Jangam i/b Mr. Girish R. Agrawal for the Appellant and Mr. Swapnil Mhatre Respondent Nos.1 to 3.

6. Mr. Jangam, learned counsel for appellant would submit that there is perversity in the findings of the Trial Court and the Appellate Court as the Court have not rightly appreciated the evidence on record. He would submit that there was no proof of partition amongst the parties and that name of the appellant had entered into record of rights in the year 1974-1975. He submits that there is misreading of the evidence by the Trial Court and the Appellate Court.

7. *Per contra*, Mr. Mhatre, learned counsel for the respondent would submit that there is a specific admission as regards the partition which was effected prior to the year 2004 as also as regards the mutation

entry No.9377. He points out the admissions given by the defendant in cross examination as regards the mutation entry No.9377. Drawing attention of this Court to the mutation entry No.9377 which has been exhibited in the Trial Court proceedings, he submits that 21R out of survey No.847/New Survey No.11/4 came to his share of the plaintiff's predecessor and said mutation entry has not been challenged till date.

8. Considered the submissions and perused the record.

9. Plaintiff has come with the case of prior partition based on which 2/3rd share i.e. the suit property has come to the share of the plaintiff and he was in possession of the same. In support he has produced the mutation entry No.9377 which corroborates his case of the previous partition as also the suit property being allotted to the share of the plaintiff. The Trial Court as well as the Appellate Court has rightly considered the mutation entries coupled with the admission given by the defendants as regards the earlier partition, certification of the mutation entry No.9377 as also possession of the parties as per the mutation entry No.9377.

10. Considering that there was no challenge to the mutation

entry and the possession of the plaintiff under the earlier partition was established by oral and documentary evidence on record, it was rightly held that the defendant without having any right to be in possession has forcibly taken possession of the suit land.

11. Upon scrutiny of the judgment of the Trial Court and the Appellate Court, it cannot be demonstrated that there is any perversity in the findings. The Trial Court and the Appellate Court has rightly appreciated the oral and documentary evidence which has come on record. In exercise of powers under Section 100 of CPC, this Court cannot reappreciate the evidence unless perversity is demonstrated. All the evidence which was produced on record is duly considered and rightly appreciated. As such no substantial question of law arises.

12. Appeal stands dismissed. Civil Application does not survive and is accordingly disposed of.

(SHARMILA U. DESHMUKH, J.)