



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.250 OF 2017
WITH
CIVIL APPLICATION NO.1047 OF 2016
IN
SECOND APPEAL NO.250 OF 2017

Sitaram Shivaji Kamble

... Appellant.

Versus

Uttam Dattatray Patil and Anr.

... Respondents.

Mr. Vikrant Desai i/by Suresh Kamble, for the Appellant.
Mr. M.A. Choudhary a/w. Mr. Ranveer Choudhary, Ms. Trisha
Choudhary, for Respondent Nos.1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 14, 2024

P. C.:

1. By way of Second Appeal, the original plaintiff is before this Court against the concurrent findings of the trial Court as well as the Appellate Court.
2. Regular Civil Suit No.72 of 1999 was filed by the plaintiff seeking declaration of ownership and for perpetual injunction restraining the defendants from obstructing the possession of the plaintiffs over the suit property. Subsequently, the prayer for declaration of ownership was withdrawn vide pursis at Exhibit 81

and the suit was limited to the relief of perpetual injunction. The relief was claimed in respect of land Gat Nos.152 and Gat No.155 of village Pacharde, Taluka Bhudargad. The case of the plaintiff was that the suit properties were originally belonging to Harijan Community and it was mortgaged to the father of the Defendants, which mortgage came to be redeemed. That, in the year 1991, the Tahsildar had passed an order to mutate the name of the plaintiff in the possession column and that other members of the community were also cultivating the same. That, the Plaintiff is original owner of the suit properties since 1991 and he is tenant of the suit properties. That, the cause of action arose when the defendants threatened to take possession of the property.

3. The suit came to be resisted by the defendants. The ownership of the Harijan community over the suit properties and the mortgage of the suit properties was denied. It was contended that the name of the plaintiff was mutated in the year 1991 without notice to the defendants. That, the Plaintiff cannot claim dual ownership on ground of title and tenancy. Objection on the ground of non-joinder of necessary parties was also taken as there

are other co-owners of Gat Nos.152 and Gat No.155. It was contended that the defendants are in possession of the properties and the plaintiffs are seeking to oust the defendants on the strength of the revenue entries in the year 1991.

4. The parties went to trial and the trial Court negated the issue as regards the exclusive ownership and possession of the plaintiff over the suit property. As against this, the plaintiffs filed Regular Civil Appeal No.298 of 2006, which came to be dismissed.

5. Heard Mr. Vikrant Desai, learned counsel appearing for the Appellant and Mr. M.A. Choudhary, learned counsel appearing for the Respondent Nos.1 and 2.

6. Learned counsel appearing for the Appellant would submit that the concurrent findings suffers from perversity as the evidence on the aspect of possession has not been rightly appreciated. He submits that in the RTS proceedings, the plaintiff's name came to be mutated in the revenue records, which is sufficient evidence of possession coupled with the evidence of adjacent landowners.

7. Considered the submissions and perused the evidence.

8. The Trial Court considered the oral and documentary evidence adduced by the Plaintiff and held that the 7/12 extracts of the suit properties indicates that there are other co-owners who have not been made party to the proceedings. The Trial Court noted that there was no documentary evidence to prove that the suit properties were mortgaged with the Defendant's father and the mortgage was redeemed. The Trial Court considered the mutation entries produced on record which showed that suit properties were purchased and not mortgaged by the Harijan community. On the aspect of grant of injunction, the Trial Court observed that the Plaintiff must establish his right before seeking injunction. Considering the entries in record of rights, the Trial Court held that the Defendants and other members are in possession.

9. The Appellate Court re-appreciated the evidence on record and noted that the revenue records shows the possession of the Defendants since the year 1978 onwards and in the year 1991, the name of the Plaintiff was mutated without notice to the Defendants. The Appellate Court considered the sale deeds which

showed that the suit properties were sold and not mortgaged and held that the Plaintiff has failed to prove that the suit properties were mortgaged with the Defendant's father.

10. In order to be entitled to the relief of perpetual injunction, it was incumbent upon the plaintiff to establish his lawful possession over the suit land. The Appellate Court has taken into consideration the claim of the Plaintiff of being in possession for and on behalf of the people from Harijan community and has held that there is no documentary evidence to establish that the suit lands belong to the plaintiff or to the people from the Harijan community. The Appellate Court considered the 7/12 extracts of the years 1978 onwards which showed the defendants in possession of the suit lands. It is not disputed that in the RTS proceeding by which the name of the plaintiff came to be entered in the revenue record, for the first time in the year 1991-1992, no notice was given to the defendants.

11. The Appellate Court has noted the variance in the affidavit at Exhibit 38 that the mortgage was redeemed and the additional affidavit of evidence Exhibit 81, in which it is stated

that the mortgaged money was not repaid within time and inspite of the said position, possession of the suit land is retained with the plaintiff.

12. The findings of the Trial Court and the Appellate Court is based on the evidence on record. The documentary evidence in form of 7/12 extracts shows the mutation of name of Plaintiff in the year 1991 and not prior thereto, which mutation was without notice to the Defendants and cannot be considered. The sale deeds on record would indicate that the suit properties were sold and not mortgaged. In the face of the documentary evidence on record, the Trial Court as well as the Appellate Court has declined to consider the affidavits of adjacent land owners, which cannot be faulted with.

13. Having perused the record, in my view, there is no perversity in appreciation of evidence by the Trial Court and Appellate Court. Learned Counsel for Appellant has not brought to the notice of the Court any finding which would demonstrate that the evidence on record has not been rightly appreciated by the Trial Court and Appellate Court. Hence, no substantial question of

law arises.

14. Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Application does not survive and same stands disposed of.

(Sharmila U. Deshmukh, J.)