



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 59 OF 2018

Mr. Mahadu Karbhari Pund (Mali).

...Appellant.

Versus

Mr. Ramdas Khandu Mhaske.

...Respondent.

Mr. Rameshwar Gite, Mr. Rohit D. Garade and Mr. Sushant N. Tare for the appellant.

Mr. Anilkumar K. Patil, Mr. Rahul Rote and Mr. Zeel Jain for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 27, 2024.

P. C. :

1. Heard.
2. Being dissatisfied by the judgment dated 10th March 2015 passed by the Appellate Court in Regular Civil Appeal No. 32 of 2005 allowing the appeal and quashing and setting aside the judgment and decree dated 5th February 2005 passed in Regular Civil Suit No. 50 of 2002, the original defendant is before this Court. For the sake of convenience parties are referred to by their status before Trial Court.
3. Shorn of unnecessary details, facts necessary to be expounded are that RCS No.50 of 2002 was instituted by the Plaintiff seeking

recovery of possession of land bearing Gat No.550/2 claiming to be the ancestral property of Plaintiff. It was contended that taking advantage of his name in the crop cultivation column, the Defendant has forcibly dispossessed the Plaintiff from the suit land. It was contended that as against the order of Tahsildhar in Crop Cultivation Case No.77/99, the Plaintiff had preferred an Appeal which was allowed and the order of Tahsildhar recording the name of Defendant in cultivation column has been set aside. Thus suit came to be filed seeking recovery of possession.

4. The suit came to be resisted by the Defendant claiming that the Defendant's father vide registered Sale Deed dated 2nd June 1953 had purchased the suit land alongwith Survey No 11/1 from the father of the Plaintiff on payment of consideration of Rs.1,200/- and was the ownership property of Defendant. It was contended that the present Gat No.550/2 was earlier Survey No.210/2. Survey No.210/2 alongwith Survey No.11/1 were included in Gajarwadi Revenue Village after re-organisation of villages. It was contended that against the order of Sub Divisional Officer setting aside order of Tahsildhar, appeal is preferred before Additional Collector which is pending. It was contended that since the year 1953, the suit land is in possession of the Defendant and counter claim was filed seeking declaration of

ownership by adverse possession.

5. The parties went to trial. The trial Court dismissed the suit and allowed the counter claim of the defendant declaring the Defendant as owner of the suit land by adverse possession. As against this, the original Plaintiff filed appeal bearing RCA No.32 of 2005. On the other hand, the Defendant did not challenge the decree granting ownership by adverse possession either by filing an Appeal or by way of cross objection and thus accepted the decree of ownership by adverse possession.

6. The Appellate Court allowed the Appeal and decreed the suit by framing and answering the following points for determination:

Points	Findings.
1. Whether Plaintiff proves that he has got right, title and interest in the suit land bearing Gat No. 550/2 admeasuring 37 R of village Gajarwadi as a owner ?	...In the affirmative.
2. Whether Plaintiff proves that till 1/8/2000 he was in possession of the suit land and on that day, Defendant forcibly took the possession of the suit land from him ?	...In the affirmative.
3. Whether Defendant proves that he had got right, title and interest in the suit land as a owner and possessor since 1953 ?	...In the negative.
4. Whether Defendant proves that he has got right, title and interest in the suit property by way of adverse possession ?	...In the negative.
5. Whether suit is within limitation ?	...In the affirmative.

6. Whether Plaintiff is entitled for the relief of possession as claimed ? ...In the affirmative.
7. Whether Defendant is entitled for the counter claim as prayed ? ...In the negative.
8. Whether Judgment and decree passed by Ld. Trial Court is just and proper ? ...In the negative.
9. Whether any interference is required in the impugned Judgment and decree ? ...In the affirmative.
10. What order ? ... As per final order.

7. Heard Mr. Rameshwar Gite, learned Counsel appearing for the Appellant and Mr. Anilkumar Patil, learned Counsel appearing for the Respondent.

8. Mr. Gite, Learned Counsel for the appellant would submit that the Appellate Court while reversing the decree of the trial Court has mis-appreciated the documentary evidence on record, i.e., the sale deed of the year 1953 and the Mutation Entries. Pointing out to the sale deed he submits that the sale deed was executed in respect of Survey No.11/1 and Survey No.210/2 and subsequent to the reorganization of villages, Survey No.210/2 became Survey No.200/2 which is evident from the mutation entry produced on record. He further contended that during the implementation of consolidation scheme, Survey No.200/2 was formed into Gat No.550, which was later

divided into Gat No. 550/2 of which 38-Are land is the suit property. He submits that nexus between the conversion from Survey No.210/2 to Gat No.550/2 has been established through documentary evidence which has been ignored by the Appellate Court. He submits that as there is perversity in findings, substantial question of law arises.

9. *Per contra* Mr. Patil learned counsel for the respondent would submit that the Defendant has accepted the decree of the year 2005 declaring the Defendant as owner by adverse possession. He submits that having exercised the doctrine of election by accepting the decree of the suit land by adverse possession, it is now too late in the day to assail the findings of the appellate Court on the issue of ownership on the basis of the sale deed. He submits that for the purpose of ownership by adverse possession, a title hostile to that of the original owner is required to be established which has not been done in the present case. He would further submit that by claiming ownership by adverse possession, the title of the Plaintiff is accepted. He submits that in exercise of jurisdiction under section 100 of CPC, it is impermissible for this Court to re-appreciate the evidence on record.

10. I have given my thoughtful consideration to the submissions and have perused the record.

11. By the Judgment dated 5th February, 2005, the Trial Court decreed the counterclaim of the Defendant seeking declaration of ownership by adverse possession. Despite rendering a finding in favour of Defendant on the issue of purchase of the property under the registered sale deed 2nd June, 1953, the Trial Court has thereafter decreed the counter claim declaring the Defendant as owner by adverse possession. The said decree was accepted by the Defendant and no cross objection was filed seeking declaration of ownership title under the registered sale deed.

12. The Appellate Court on re-appreciation of evidence held that there is no evidence to prove that the suit land was purchased under the Sale Deed dated 2nd June, 1953 or that Survey No.210/2 was converted into Gat No.550/2. The Appellate Court which is the last fact finding Court, on re-appreciation of evidence has held that the nexus between Survey No.210/2 and Gat No.550/2 i.e the suit land has not been established. It is settled that even an erroneous finding of fact cannot be corrected under Section 100 of CPC unless it is demonstrated that the finding of Appellate Court is without any evidence or wrong inference has been drawn from proven facts by applying law erroneously. In the instant case, the Appellate Court has considered the evidence of TILR who has deposed that old Survey No

of Gat No.550/2 was 200/2-A and held that the Defendant has not adduced any evidence to prove that Survey No.210/2 was converted in Survey No.200/2. The Appellate Court has based its findings on re-appreciation of evidence on record, which evidence cannot be re-appreciated by this Court under Section 100 of CPC to come to a different finding based on the same evidence. The Appellate Court has rightly held that the findings of the Trial Court on ownership under the registered Sale Deed and ownership by adverse possession are contrary to each other and therefore perverse.

13. It is well settled that the Defendant is entitled to take inconsistent pleas. The Defendant in his written statement claimed ownership under the registered sale deed dated 2nd June, 1953 and also filed counter claim raising inconsistent plea of ownership by adverse possession. The plea of proprietary ownership by virtue of the sale deed and possessory ownership by adverse possession being inconsistent pleas, without renouncing one of the pleas, the other plea cannot be sustained. The decree of Trial Court not having been challenged by the Defendant, the Defendant has renounced his plea of proprietary ownership under the sale deed and is now estopped from canvassing submissions on perversity of findings of Appellate Court on the issue of proprietary ownership under the registered sale

deed.

14. There is no submission advanced on the reversal of finding of Appellate Court on the ownership by adverse possession and rightly so as there is no evidence on record to demonstrate that the title of the Defendant was hostile to that of the Plaintiff and for the statutory period.

15. In light of the discussion above, the submissions on perversity of findings of the Appellate Court on the issue of ownership of the suit land under the registered sale deed does not raise any substantial question of law. The appeal stands dismissed.

16. In view of the disposal of Second Appeal, Civil/Interim Application taken out in this Appeal, if any, does not survive and the same is disposed of.

17. At this stage, request is made for continuation of the ad-interim relief for a further period of 6 weeks. The ad-interim relief granted earlier to continue for the period of 6 weeks from the date of uploading of this order.

[Sharmila U. Deshmukh, J.]