Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.492 OF 2018

Shri.Jalindar Anna Patil ...Appellant

Versus

Raghunath Bandu Patil
(Deceased Thru Lrs.)
1A. Smt. Housabai Raghunath Patil
(Deleted)
1B. Sonabai Raghunath Patil
(Deleted)
1C. Mangal Raghunath Patil & Ors. ...Respondents

Mr. S. S. Patwardhan for the Appellant.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : JANUARY 16, 2024

P. C. :

1. Being dissatisfied with the concurrent findings of the Trial Court and the Appellate Court, the Appellant who is the Original Plaintiff has filed the present Second Appeal.

2. Briefly stated facts of the case are that the Regular Civil Suit No. 416 of 1992 was instituted by the Plaintiffs for partition of the suit properties. The case of the Plaintiff was that one Bandu Gopal Patil was the grandfather of the Plaintiff. Bandu Patil had two sons Anna and

Raghunath and a daughter named Tanubai. Plaintiff and his brother are the legal heirs of Anna and the Defendant No. 1 is Raghunath i.e. the uncle of the Plaintiffs. It appears that subsequently Raghunath expired and his legal heirs were brought on record. The suit properties are described at Serial No. 1 to 19 in paragraph 1A and also a house property bearing No. 160 described at paragraph 1B which is claimed to be the ancestral property of the Plaintiffs.

3. The case of the Plaintiff is that there is no partition. In regard to Survey No. 13, admeasuring 20H 9R land the specific pleading was that the Plaintiff's grandfather was the tenant of the property and the Plaintiff had paid the purchase amount to Bandoba for making payment for purchase of the tenanted property. The Defendants filed their written statement contending that the land bearing Survey No. 13 was exclusively acquired by him under the tenancy proceedings and the purchase amount was also paid by Raghunath. It was also contended that one house property in which the Plaintiff is residing is not included in the suit. It was contended that there was a partition and the properties were allotted to Anna and accordingly "khate utara" was separated in the revenue records and there was partition three years before the death of Bandu.

4. The parties went to trial and the Trial Court dismissed the suit as against which the original Plaintiff filed Regular Civil Appeal No. 56 of

2006 which came to be dismissed by Judgment dated 6th March, 2017.

5. Heard Mr. Patwardhan, learned counsel for the Appellant.

6. Mr. Patwardhan, learned counsel for the Appellant has taken this Court through the concurrent findings of the Trial Court and the Appellate Court. He would submit that the question of law is the perversity in the findings of the Trial Court as well as the Appellate court by relying on the 7/12 revenue extract for concluding the case of partition which was put up by the Defendant. He further submits that material evidence of the 32M certificate being issued in the name of Bandu Gopal Patil has been ignored and as such, there is perversity in the findings

7. Considered the submissions and minutely scrutinized the findings of the Trial Court and the Appellate Court.

8. Before the Trial Court the Plaintiffs as well as the Defendant had filed various documents. These documents have been considered by the Trial Court in paragraph No. 17 of the decision. The revenue records have been produced on record by the Plaintiff himself. As regards the 7/12 extract of Survey No. 13 and other lands at Exhibit 4 to 14, the Trial Court has recorded that the names of Raghunath, Vasant and Anna are entered into this land as per the share mentioned in the 7/12 extract in respect of different lands. The Trial Court also considered the "khate utara" of Raghunath and Plaintiff which indicates that there was separate ownership in respect of those lands. The "khate utara" of certain other properties indicated the name of Anna and in respect of some other properties the name of Raghunath.

9. The Plaintiffs have produced the "khate utara" which shows the name of the Plaintiff in respect of certain lands by deleting the name of Anna. The Trial Court on the basis of the various revenue records have correctly held that the khate of Anna and Raghunath were separately maintained in revenue records for last many years and that the area mentioned in the khate utara shows that almost equal land was divided in between the Anna and Raghunath since last many years and also that there was separate land in the name of Vasant the brother of the Plaintiff.

10. The finding of the Trial Court is based on the documentary evidence which is produced by the Plaintiff as well as the Defendant. It is not the case of the Plaintiffs that there was any challenge and these mutations entries have been existing since last many years.

11. As regards the separation of Anna and Raghunath, the various documentary evidence in the form of sale deed were considered by the Trial Court which shows that Raghunath had purchased certain properties in his own name. The Trial Court has also considered the mutation entries which show that after the demise of Bandu, the names of Raghunath and Anna were entered into the lands entered in the name of Bandu and subsequently the names of the heirs of Anna were entered into lands entered in the name Anna. The Trial Court rightly considered that the mutation entries indicated that the name of Anna was mutated separately in his name in respect of certain lands and there were also certain properties which were purchased by Anna separately. The Trial Court therefore on the basis of documentary evidence, came to a finding that the partition of the family property had been taken place between Anna and Raghunath and both had purchased different lands in their own names.

12. It cannot be debated that the burden was open to the Plaintiffs to show that the suit properties in respect of which partition was claimed was a joint family property. The evidence in the form of documentary evidence which has come on record makes out the case of partition between Anna and Raghunath. As regards the land bearing Survey No. 13 is concerned, the Trial Court has taken into consideration the application made by Anna in which he has mentioned that the land Survey No. 13 was allotted to Raghunath in family partition and on that basis, directions were given by ALT to issue purchase certificate in the name of Raghunath only. Admittedly this order is not challenged by the Anna during his lifetime and neither by the Plaintiffs. In view of the specific admission of Anna before an authority that the land Survey No. 13 was allotted to Raghunath as also an admission that there is a family partition, the suit was rightly dismissed by the Trial Court.

13. The findings of the Trial Court which have been affirmed by the first Appellate Court is based on the oral and the documentary evidence which has came on record. The Appellate Court have considered the findings of the Trial Court based on the evidence which has came on record and has considered the mutation entries as well as the revenue records and has thereafter dismissed the appeal as well as the cross objections filed by Respondent No. 4A. The Appellate court considered the admission of the Plaintiff that Anna had not preferred any appeal against the order passed in the 32G proceedings as also that Raghunath had paid the purchase price at the treasury, and that the Plaintiff has further admitted that there was separate khate since lifetime of the Bandu. The Appellate Court has also considered the evidence of Defendant No. 1b-Putalabai who has deposed about the partition between the Anna and Raghunath during the lifetime of Bandu and that at the time of partition, the Grampanchayat House No. 160 was given to Raghunath and Grampanchayat Property No.55 and 56 was given to the Anna and accordingly they are in separate possession. The Appellate court considered the separate khate extract in the name of Raghunath and arrived at the conclusion that there was a partition between the Anna and Raghunath. The Appellate Court considered that Bandu expired on 5th September, 1963 and the order of Additional Mamlatdar and ALT was passed on 2nd May, 1964 and the statement was made by Anna that the joint estate was partitioned and the suit land i.e. Survey No. 13 had gone to the share for his younger brother Raghunath and as such, the name of Raghunath should be entered. The Appellate Court considered that the payment was made by Raghunath and the 32M certificate was also issued in the name of Raghunath which had not been challenged. The Appellate Court has rightly considered the provisions of Section 114 of the Evidence Act, that the judicial and official acts are presumed to have been regularly performed.

14. It is well settled that to constitute the partition, there must be a definite and unequivocal intention of the members of the joint family to separate themselves and enjoy their shares separately. In the present case, the documents on records established the definite intention of Anna and Raghunath to separate themselves and to enjoy their property individually which is also indicated that by the fact that subsequently, certain properties were purchased by Anna and Raghunath in their individual names.

15. Considering the entire evidence which is come on record in my view, the Trial Court and the Appellate Court has rightly appreciated the same. No substantial question of law arises. The submissions of the learned counsel for the Appellants enter into realm of re-appreciation of evidence which is not permissible under Section 100 of CPC.

16. Appeal stands dismissed.

(SHARMILA U. DESHMUKH, J.)