



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.651 OF 2014

Anandji Daya Rathod (since deceased),
through its LR's. and Ors.

... Appellants.

Versus

Naresh Nanu Mhatre and Ors.

... Respondents.

Mr. Rajesh S. Datar, for the Appellants.

Mr. Anand S. Patil, for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : April 2, 2024.

P. C. :

1. The original plaintiffs are before this Court being dissatisfied by the judgment dated 3rd May, 2014 dismissing the Appeal and thereby confirming the judgment dated 10th January, 2006 passed by the Trial Court in Regular Civil Suit No.340 of 2000.

2. The facts shorn of unnecessary details are that the Regular Civil Suit No.340 of 2000 was filed seeking declaration that the defendants have no right to enter into the suit land and for an order of injunction restraining the defendants from disturbing the possession of the plaintiffs over the suit land. The Trial Court on consideration of the evidence negated the issue as regards the ownership of the plaintiffs

to the suit property. On the aspect of the possession the trial Court noted that the documentary evidence on record established that the suit land was in actual cultivation of the defendants. The trial Court while negating the issue of ownership observed that the sale-deed dated 30th December, 1930 as stated in the plaint is not produced to show that the suit land is purchased by the forefathers of the plaintiffs. Trial Court dismissed the suit as against which Civil Appeal No.36 of 2006 was filed. Pursuant to the order passed by this Court permission to lead additional evidence under Order 41 Rule 27 of CPC came to be allowed. The plaintiffs adduced additional evidence and filed sale-deed dated 24th April, 1921 and 13th October, 1930.

3. The Appellate Court considered that in the cross-examination the plaintiffs have admitted that he does not know for which property the sale deeds are produced, that he does not know with whom this sale was entered into. As the sale-deeds were not proved, the same came to be marked as Article. The Appellate Court held that the witness was not aware about the suit property or the property mentioned in the sale-deed and therefore, the plaintiff is not able to establish his title over the suit property. The Appellate Court thereby dismissed the Appeal.

4. Heard Mr. Rajesh S. Datar, learned counsel appearing for the

Appellants and Mr. Anand S. Patil, learned counsel appearing for the Respondents.

5. Mr. Datar, learned counsel appearing for the Appellants would submit that the documents are more than 30 years old, there is presumption under Section 90 of the Indian Evidence Act, 1872 and it is to be presumed that the signature and every part of such document which purports to be in the handwriting of any particular person is in that person's handwriting and that it was duly executed and attested by the persons by whom it purports to be executed and attested. He submits that in view of the presumption which arises under Section 90 of the Indian Evidence Act, 1872, the Appellate Court committed an error of law in not accepting the sale-deed as evidence of ownership.

6. *Per contra*, Mr. Patil, learned counsel appearing for the Respondents submits that the pleadings in the plaint is that the suit properties are purchased by virtue of sale-deed dated 13th December, 1930 and the sale-deeds which are produced on record are dated 24th April, 1921 and 13th October, 1930. He submits that in the cross-examination, the plaintiffs have admitted that he is not aware for which property the sale deeds are produced. According to him, the sale deeds are not proved to that of the suit property and therefore not exhibited. He further submits that no substantial questions of law

arises.

7. Considered the submissions and perused the record.

8. The suit has been filed seeking a declaration that the defendants have no right to enter into the suit land and for injunction from disturbing their possession. First and foremost issue which is required to be considered is whether the plaintiffs have been able to establish their ownership over the suit property and even if that be so, if the defendants are held to be in possession, the remedy to the plaintiffs is to file a suit for recovery of possession. In the instant case, the only declaration which has been sought is that the defendants have no right to enter into the land and restraining orders against the defendants. While considering the said issue, the trial Court as well as the Appellate Court have considered the issue of ownership. As far as the Trial Court is concerned admittedly the sale-deed of the year 1930 was not produced and it is only at the appellate stage that two sale-deeds dated 21st April, 1921 and 13th October, 1930 were produced which were not proved by the plaintiffs. No doubt, there is a presumption as to the documents which are 30 years old. However, the same is rebuttable presumption under Section 90 of the Evidence Act. Section 90 of the Evidence Act is in nature of exception to the general rule contained in Section 67 and 68 of the Evidence Act.

Pertinently the presumption does not extend to contents of the document and is limited to the signature or handwriting and in the present case by way of cross-examination the defendants have established that the witness for the plaintiffs is not aware as to the sale-deeds are in respect of which property.

9. Considering the evidence which has come on record, the plaintiffs have failed to prove that the sale-deeds dated 21st April, 1921 and 13th October, 1930 are in respect of the suit land. No perversity in the findings of the Appellate Court is demonstrated. In any event the possession of the suit property is with the defendants the remedy of the plaintiffs is only to file a suit for recovery of possession. The Appellate Court has by virtue of the admissions which have come on record have held that the plaintiffs are not aware as to the sale-deeds are in respect of which property and based on the admissions have held that the documents are not proved. In the proceedings, if any, initiated by the plaintiffs seeking recovery of possession the plaintiffs may lead fresh evidence and demonstrate that the sale-deeds are in respect of the suit property, if permissible in law.

10. Needless to clarify that in the subsequent proceedings, if any, filed by the plaintiffs the defendants also would be entitled to lead all

such evidence as is necessary as regards the ownership of the suit land and also as regards the sale-deeds dated 21st April, 1921 and 13th October, 1930. The plaintiffs have failed to prove their ownership of the suit land. There are concurrent findings which cannot be interfered by this Court under Section 100 of the CPC as the findings are based on proper appreciation of the evidence on record. As such, no substantial question of law arises. Appeal stands dismissed.

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

[Sharmila U. Deshmukh, J.]