



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.) NO.27265 OF 2015
WITH
CIVIL APPLICATION NO.1729 OF 2015

Dinkar Dattu Patil and Ors.

... Applicants.

Versus

Dadu Santu Patil and Ors.

... Respondents.

Mr. Tanaji Mhatugade, for the Appellants.

Mr. Rahul P. Walvekar, for the Respondent Nos.1, 2, 4 and 5.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 21, 2024

P. C.:

1. Being dissatisfied by the concurrent findings of the Trial Court and the Appellate Court, dismissing the suit filed by the plaintiff seeking partition of suit property being Gat No.45, admeasuring 5 Gunthas, original-plaintiffs are before this Court.
2. Regular Civil Suit No.45 of 2002 was instituted seeking partition of the suit property which was situated near the village and was used for storing firewood and cattle-feed. The case of the plaintiff was that there was partition of all the properties between

the plaintiff and the defendants however, Gat no.45 i.e. the suit property was kept joint. It was pleaded that as there was obstruction by the defendants, the suit was filed.

3. The defendants resisted the suit and filed their written statement contending that prior to 1940, the defendant's father and the plaintiff's father had effected partition of all the joint family properties. It was further contended that on 15th August, 1943, the father of the defendants had purchased the suit property and it is the self acquired property, which is mutated in the name of their father as per the mutation entry No.530. The trial Court upon consideration of the oral and documentary evidence held that the partition of the year 1940 was proved as also the purchase of the suit property by the defendant's father on 14th August, 1943.

4. As against the dismissal of the suit, the plaintiffs filed Regular Civil Appeal No.296 of 2007, where the Appellate Court framed the necessary points for determination. As regards the issue of the suit land being kept joint at the time of partition of other ancestral properties, the Appellate Court negated the said issue. The Appellate Court held that the plaintiff's witness—Sattappa Sakharam Patil, claimed to know about the partition

between the plaintiffs and the defendants which partition had taken place before the birth of the witness. The Appellate Court also considered that the suit for partition was not filed during the life-time of the father of the defendants. The Appellate Court considered the mutation entry No.530, which showed that the name of the father of the defendants was mutated as per the sale deed dated 14th August, 1943.

5. Upon consideration of the narration in the mutation entry, the Appellate Court has held that no inference can be drawn that the mutation entry indicates that it was purchased on behalf of the other co-sharers also. The Court had considered the documents produced by the defendants i.e. 7/12 extract of the suit land from years 1959-1960 to 1967-1968, wherein the name of the father of the defendants is shown in the ownership as well as the possession column as also the form No.6 which mentions that the land has been purchased in lieu of Rs.30/-. The Appellate Court considered the 7/12 extracts which indicated that suit land is not under cultivation and as such, no inference was drawn as regards the joint cultivation of the defendants and the plaintiffs. The Appellate Court considered the documentary as well as the oral evidence on

record and dismissed the suit.

6. Heard Mr. Tanaji Mhatugade, learned counsel for the Appellant and Mr. Rahul P. Walvekar, learned counsel for the Respondent Nos.1, 2, 4 and 5.

7. Mr. Mhatugade, Learned counsel appearing for the Appellant would submit that the substantial question of law is the perversity of findings of the trial Court and the Appellate Court. He submits that in the mutation entry no.1528, the name of the father of the plaintiffs was recorded. He submits that alongwith the other ancestral property, the suit land also formed ancestral property and that the suit land was purchased by the father of the defendants out of the income of the joint family property.

8. Considered the submissions and perused the record.

9. The concurrent findings of the Trial Court and the Appellate Court is that the plaintiffs have failed to plead and establish that the suit land was purchased by the father of the defendants out of the income of the joint family property for the benefit of the joint family. The Courts on the basis of evidence on record has held that there was partition in the year 1940 between the plaintiffs and the defendants and that the suit property was

purchased in the year 1943 by a sale deed executed between the father of the defendants and the one Parasu Khambale.

10. It is a settled position that a party claiming the property to be the joint family property is required to prove the nucleus of joint family from which the property is purchased. For the said purpose, it was necessary for the plaintiffs to prove that there was no income of the predecessors of the defendants apart from the joint family property income and that out of the said income the suit land was purchased. The burden was upon the plaintiffs to establish the same and the findings of the Appellate Court is that there is a failure on the part of the plaintiffs to plead and prove the joint family nucleus from which the property has been purchased by Santu predecessors of the defendants. Admittedly there is sale deed which has been executed in the year 1943, which indicates that the suit property has been purchased in the name of the father of the defendants.

11. Learned counsel for the Appellant would seek to rely only on the mutation entry which shows the name of the Plaintiff No.1 in the mutation entry. It is well settled that the revenue records are only for the fiscal purpose and are not determinative of the right,

title and interest in the suit property. On the other hand, there is ample documentary evidence in the form of sale deed which shows that the property had been purchased in the year 1943 by Santu i.e. the father of the defendants after the partition has been effected in the year 1940.

12. The trial Court and the Appellate Court on the basis of the evidence has rightly held that the suit land is not proved to have been acquired out of the nucleus of the joint family income and as such, the same is not ancestral property. There is no perversity in the concurrent findings demonstrated. As such, no substantial questions of law arises in the present case. In exercise of powers under Section 100 of the Code of Civil Procedure, 1908, it is not permissible for this Court to re-appreciate the evidence on record unless perversity is demonstrated.

13. Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Applications do not survive for consideration, and the same stand disposed of.

(Sharmila U. Deshmukh, J.)