



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 172 OF 2017
WITH
CIVIL APPLICATION NO.395 OF 2017

Ananda Kondi Satpute)
Age 51 yeas, Occupation Agriculture,)
R/o Bambavade, Taluka Sawantwadi)
District Kolhapur) .. **Appellant.**

Versus

Shivaji Bandu Satpute-deceased)
through legal repreentatives)

1. Amar Shivaji Satute)
Age 31 years, Occupation Agriculture)
and Service, R/o. Donoli,)
Taluka Shahuwadi, District Kolhapur)

2. Vikram Shivaji Satpute)
Age 25 years, Occupation Agriculture)
and Service, R/o. Donoli,)
Taluka Shahuwadi, District Kolhapur)

3. Smt. Alaka Shivaji Satpute)
Age 49 years, Occupation Household)
R/o. Donoli, Taluka Shahuwadi,)
District Kolhapur)

4. Sou. Suvarna Ravindra Sakate)
Age 28 years, Occupation Agriculture)
R/o. Malkapur, District Kolhapur) .. **Respondents.**

Mr. Chetan G. Patil for Appellant.

Mr. Drupad Patil and Ms. Srushti Chalke for respondent Nos.1 to 4.

Coram : Sharmila U. Deshmukh, J.
Date : April 30, 2024.

JUDGMENT :

1. The Second Appeal is at the instance of the original Plaintiff, who had filed Regular Civil Suit No.17 of 2004 for injunction against the Respondents in respect of the suit property being Gat Nos.62 and 928 in which counter claim was filed seeking injunction against the Plaintiff in respect of the suit property.
2. The Trial Court decreed the suit and dismissed the counter-claim and in Appeal by the Defendant, the counter claim was allowed and the Plaintiff was restrained from causing any interference in the peaceful possession of the defendant to the extent of his share over the suit property.
3. Briefly stated the facts of the case are that the propositus of the plaintiff and the defendant was one Rau Santu Mang, who had two sons Kondi and Bandu. The plaintiff belongs to the branch of Kondi and the defendant belongs to the branch of Bandu. The case of the plaintiff is that the suit property was the self acquired property of Kondi. As regards Gat No.62, the same was the tenanted property and the plaintiff's father i.e. Kondi had purchased the said property on 18th July, 1979 from Shahu Chhatrapati Memorial Charitable Trust as tenant. Out of Gat NO 62 certain portion was sold by Kondi during his lifetime to third party and put them in possession. As far as Gat No.928 is concerned, it was contended that the property was an Inaam land which was purchased by the plaintiff's father and the defendant

has no right in the suit properties. As there was obstruction to the possession of the plaintiff's father over the suit property on 1st February, 2004, the present suit for injunction came to be filed.

4. The suit came to be resisted by the defendant contending that Gat No.62 was in occupation of their grandfather Rau and after the death of Rau, Kondi and Bandu were cultivating however being the elder son name of Kondi was recorded in the 7/12 extract as a "Karta" of the joint family. It was contended that thereafter, the purchase under the Tenancy Act was also in the name of Kondi. It was contended that the plaintiff has sold their share in favour of the third parties and the balance land belongs to defendant's share in the ancestral properties. Counter claim came to be filed seeking injunction on the ground that the suit properties are the ancestral properties and the plaintiff having alienated his share, the balance property belongs to the defendant. To the counter-claim the original-plaintiff filed his written statement alleging that the defendant has no right in respect of the suit properties.

5. The Trial Court held that Gat No.62 was the tenanted land of Rau and Gat No.928 are the ancestral property. The Trial Court held that in the year 1981 Kondi and Bandu had separated which is evident from the Mutation Entry No.1761 by which name of Bandu was mutated in respect of ½ share of the properties and subsequently the parties have independently dealt with their properties. The Trial Court noted that the claim of Defendant is of ½ share in Gat No 62, however part of the property was alienated by the Plaintiff about which the

Defendant has not taken any steps. The Trial Court held that the defendant has failed to prove possession and thereby decreed the suit and dismissed the counter-claim.

6. As against this, in Regular Civil Appeal No.9 of 2008 filed by the Defendant the Appellate Court allowed the Appeal holding that the Rau was the original-tenant in land Gat No.62 and Bandu and Kondi both have equal share by inheritance. On re-appreciation of evidence the Appellate Court held that the plaintiff was not in the possession of the suit properties but the defendant was in possession. As as per Mutation Entry No.1761, Kondi had mutated half share equally in his name and in the name of Bandu. The Appellate Court noted that the plaintiff has admitted that from the income of Inam land i.e. Gat No.928, suit property Gat No.62 is purchased. The Appellate Court held that there was no evidence to show that the suit property is self acquired property of the plaintiff and as the plaintiff has already sold his share, the defendant has half share in Gat No.62 as well as in Gat No.928 though the lands are tenancy land and Inaam land. The Appellate Court by the judgment dated 23rd August, 2016 allowed the Appeal setting aside the judgment and decree of the Trial Court and dismissed the suit and allowed the counter-claim of the defendant restraining the plaintiff from causing any interference in the peaceful possession of the defendant to the extent of his share over the suit property.

Submissions:

7. Mr. Chetan Patil, learned counsel appearing for the Appellant

has taken this Court through the evidence of the Trial Court and the Appellate Court. He would submit that the Appellate Court has allowed the counter-claim of the defendant after holding that the suit properties are the joint family properties. He submits that once there is finding that there was no partition and the suit properties are the joint family properties, the plaintiff and the defendant are co-owners and no injunction could be granted against the plaintiff. He would submit that the other substantial question of law which arises is that the finding of the Appellate Court that the plaintiff is not in possession and the defendant is in possession of the suit property is not supported by any reasoning or discussion by the Appellate Court. He further submits that the Trial Court upon consideration of documentary evidence and in particular mutation entry no.1761 has held that there was a partition pursuant to which the suit properties were partitioned and thereafter, Kondi and Bandu have independently dealt with the properties. He submits that in the counter-claim the defendant has admitted that Kondi was the Karta of the joint family properties and that the properties are entered in the name of Kondi being the Karta and the suit properties are in the possession of both the plaintiff and the defendant.

8. *Per contra*, Mr. Drupad Patil learned counsel appearing for the Respondent-defendant would contend that the plaintiff's case was of injunction. He submits that the substantial question which is being raised in the present case is as regards allowing of the counter-claim of the defendant after holding that the properties are not partitioned and constituted joint family properties. He submits that once it has

been held that the suit properties are the joint family properties as Gat No.62 was tenancy land and Gat No 928 was re-grant innaam land, the plaintiff alone is not entitled to possession over the suit properties. He would fairly concede that once it is held that the suit properties are the joint family properties, there cannot be any grant of injunction *qua* the co-owners of the properties. In support, he relies on the following decisions of the Apex Court, as under:

- (I) Sakhahari Parwatrao Karahale and Anr. vs. Bhimashankar Parwatrao Karahale, [(2002) 9 SCC 608],***
- (ii) Sant Lal Gupta and Ors. vs. Modern Cooperative Group Housing Society Limited and Ors. [(2010) 13 SCC 336].***

9. Upon hearing learned counsel for the parties, the Second Appeal is admitted on the following substantial question of law:

“Whether the 1st Appellate Court could have decreed the counter-claim of the defendant and passed restraining order against the plaintiff after holding that the suit properties are the joint family properties and as such no injunction can be granted against the co-owners ?”

10. Learned counsel for the parties submits that considering the limited issue involved, the Second Appeal be taken up forthwith for final disposal and submissions made by the learned counsel for the parties at the time of hearing may be considered as submissions for final disposal. With consent of the parties, this Court has proceeded to decide the Second Appeal finally.

REASONS AND CONCLUSION:

11. The plaintiff has come with the case that Gat No.62 and Gat No.928 are the self acquired properties of the plaintiff and the defendant has no right in the said properties. As against this the case of the defendant is that the suit properties were the ancestral properties and Kondi being the Karta of the joint family, his name was entered in the 7/12 extract and that the possession of the suit properties was jointly with the plaintiff and the defendant. By way of the counter-claim, the defendant sought an injunction restraining the plaintiff from obstructing the defendant's possession over half share of the suit properties by contending that the plaintiff and his father have sold half share of Gat No.62 in favour of third party and as regards the Gat No.928, the plaintiff and the defendant have half share.

12. The Trial Court by considering the mutation entries on record held that there was partition between Kondi and Bandu as they have subsequently independently dealt with their properties. On the basis of the evidence, the Trial Court noted that after 1981, when the mutation entry was certified and considering the subsequent development the defendant do not have any right in Gat Nos.62 and 928 and that the Defendant has not proved his possession. The Appellate Court has dismissed the suit and allowed the counter claim passing restraining orders against the Defendant.

13. As against the dismissal of the suit, no submissions were advanced and rightly so as the Appellate Court has come to a finding that the suit properties were joint family properties and there was no

case of partition made out by the plaintiff in the said suit. The Trial court thus could not have rendered a finding of partition in the absence of any such pleadings in the plaint. The only submission is that once it is held that the properties were joint family properties no injunction could be granted against the co-owners. It is settled position in law that a co-owner has an interest in the whole property and also every parcel of it and possession of a joint property by co-owner is in the eyes of law the possession of all even if all but one is actually out of possession unless there is ouster pleaded.

14. In the present case, there is no case of ouster pleaded and as such the possession either of the plaintiff or of the defendant is the possession of all the co-owners. The Apex Court in the case of ***Sakhahari Parwatrao Karahale and Anr.*** (supra) which has been rightly relied upon by Mr. Patil has specifically held that it is inconceivable that injunction could be granted against another co-sharers of the joint Hindu family property. Mr. Patil has also fairly conceded to the settled position in law that no injunction can be granted as against the co-owner and therefore, the counter-claim seeking injunction against the plaintiff could not have been allowed.

15. In light of the discussion above, the counter-claim of the defendants seeking injunction against the plaintiff could not have been decreed by the Appellate Court after rendering a finding that the Gat No.62 and Gat No.928 are joint family properties as there can be no injunction against a co-owner.

16. The substantial question of law is accordingly answered in

favour of the defendant. Consequently, the impugned judgment to the extent of Clause (4) allowing the counter claim of the defendant and restraining the plaintiff from causing any interference in peaceful possession of the defendants to the extent of his share over the suit properties is quashed and set aside.

17. Appeal stands allowed to the extent of modification as indicated above. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]