



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.669 OF 2017
WITH
CIVIL APPLICATION NO.210 OF 2017

Vittal Bhusaheb Jadhav

...Appellant/
Applicant

Versus

Chandrashekhar Vilas Shinde

...Respondent.

Adv.Nitin P. Deshpande for the Appellant/Applicant.

Coram : Sharmila U. Deshmukh, J.

Date : April 1, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 9th August, 2016 allowing the Appeal thereby quashing the judgment and decree dated 15th September, 2012 passed in Regular Civil Suit No. 58 of 2007, the original Defendant No. 1 is before this Court. For the sake of convenience, the parties are referred to their status before the Trial Court.

2. The facts of the case are RCS No. 58 of 2007 came to be instituted by the Plaintiff for perpetual injunction against the subsequent purchaser of undivided share in the co-parcenary property. The case of the Plaintiff was that the property was ancestral

property and alienating co-parcener has alienated her undivided share in favour of the Defendant No. 1. It is contended that the Defendant No. 1 is trying to obstruct the possession of the Plaintiff on the basis of the registered sale deed dated 9th May, 2007.

3. The suit came to be resisted by the Defendant No. 1 denying the allegations. According to the Defendant No. 1 the suit property constitutes undivided share in the co-parcenary property, however, the suit property was in a possession of his vendor i.e. Defendant No. 2 and was being separately cultivated. It was contended that upon execution of the sale deed, the Defendant No. 1 was put in possession of the suit property and was cultivating the same. The Trial Court vide order dated 15th September, 2012 decreed the suit restraining the Defendant No. 1 from causing obstruction to the Plaintiffs possession over the suit property.

4. As against this, the original Defendant No. 1 filed Regular Civil Appeal No. 48 of 2015. The Appellate Court considered that the Plaintiff was having undivided share in the co-parcenary property. The Appellate Court considered that the Plaintiff had not sought any relief *qua* the sale deed which was executed in favour of the purchaser of the undivided share. The Appellate Court held that the Plaintiff is only a co-owner and a co-sharer and has sought injunction in respect of

entire land despite having only an undivided share. The Appellate Court held that the undivided share can be alienated by the co-parcener and the Defendant being the co-owner by virtue of a registered sale deed, an injunction cannot be granted against the co-sharer.

5. The Appellate Court by the impugned judgment allowed the Appeal and dismissed RCS No. 58 of 2007.

6. Heard Mr. Deshpande learned counsel for the Appellant

7. Mr. Deshpande, learned counsel for the Appellant would submit that the Defendant without filing the suit for partition could not have obstructed the possession of the Plaintiff. He would further submit that the suit was for simpliciter injunction and as such, the other co-sharer were not necessary parties to the suit. He would further submit that there is a perversity in the findings of the Appellate Court giving rise to the substantial question of law.

8. Considered the submissions and perused the record.

9. The suit for perpetual injunction is filed by the non-alienating co-parcener against the purchaser of undivided share in the co-parcenary property. The admitted position is that the suit was filed for

simpliciter injunction and there is no challenge to the sale deed executed by the alienating co-parcener. Perusal of the judgment dated 15th September, 2012, would indicate that the Trial Court by very cryptic judgment has decreed the suit without giving any reasoning or findings on the issues framed for consideration. The Trial Court on the basis of the pleadings held that the Plaintiff is in possession of the property and entitled to perpetual injunction. The Trial Court held that the Plaintiff is entitled to perpetual injunction till the partition of the suit property is effected without any consideration of the evidence which has brought on record and contrary to the provisions of settled position in law. The Appellate Court has rightly appreciated the evidence which has come on record and has held that there is no bar to the alienation of an undivided share of the co-parcenary property. The Appellate Court has rightly held that there is no challenge to the sale deed and the subsequent purchaser being a co-owner, no order of injunction can be passed as against a co-owner.

10. The Appellate Court on the basis of evidence has come to the right finding by applying the relevant provisions of law. It is well settled that it is impermissible for this Court under Section 100 of CPC to re-appreciate the evidence which has come on record unless it is shown that the findings of the Appellate Court are based no evidence

and or wrong inference from the proven facts is drawn by erroneous application of law. In the present case, the order of the Appellate Court in fact demonstrate that the evidence has been rightly appreciated by applying the correct provisions of law. As such, no substantial question of law arises.

11. Second Appeal stands dismissed.

12. In view of dismissal of Second Appeal, Civil Application does not survives for consideration and the same is disposed of.

[Sharmila U. Deshmukh, J.]

Harish

Signed by: Harish V. Chaudhari

Designation: PA To Honourable Judge

Date: 04/04/2024 11:18:40