



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 383 OF 2007

Kisan Vithoba Dhore,
aged about 45 years, Agriculturist,
R/o Zidkinhi, Tahsil Kalamb,
District – Yavatmal.

...APPELLANT

Versus

Anil Digamber Bhoyar,
aged about 48 years, Cultivator,
R/o Zadkinhi, Tah. Kalamb,
District – Yavatmal.

...RESPONDENT

Ms R.P. Jog h/f Shri A.C. Dharmadhikari, Counsel for the appellant.
None for the respondent.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON : JANUARY 15, 2024
JUDGMENT IS PRONOUNCED ON : JANUARY 17, 2024

JUDGMENT :

The appeal has been admitted on the following
substantial questions of law :

*“(1) Whether the reasons recorded by the first
appellant Court in paragraph no.13 of the judgment for
reversing the judgment and decree passed by the trial
Court, are perverse and not supported by any pleadings
or evidence on record?*

*(2) Whether the first appellate Court was justified in
holding that the defendant was not the exclusive owner*

of the suit property and the property belongs to the joint family, without considering the admission in the cross-examination of the defendant to the effect that the joint family properties were already partitioned and each of the brothers of the defendant and the defendant were put in separate possession of the same ?”

2] The appellant is the original plaintiff and the respondent is the original defendant. The parties will be hereinafter referred to by their original nomenclature.

3] The plaintiff filed a suit for specific performance of contract, which the parties entered into on 4/8/2003. The trial Court decreed the suit bearing Regular Civil Suit No. 14/2004. The First Appellate Court, however, reversed the same vide judgment dated 23/1/2007 passed in Civil Appeal No. 37/2005. In paragraph 13 of the judgment, the First Appellate Court noted that the trial Court did not consider the admission given by the plaintiff that the property under question was an ancestral property. The First Appellate Court then noted that the agreement to sell does not refer to any legal necessity nor is there any pleading or proof to that effect. The other owners,

i.e., the family members are also not made party to the suit and thus their shares cannot be sold without their consent.

4] The learned Counsel for the plaintiff, however, has rightly pointed out that this finding is contrary to the facts and evidence led before the trial Court. The trial Court noted that on 4/8/2003, the agreement to sell (Exh. 34) was duly signed and registered before the Sub-Registrar's Office. The defendant, in his cross-examination, has accepted his signature and also execution of agreement in favour of the plaintiff. He has further admitted that he is absolute owner of the suit property.

5] My attention is invited to the defendant's evidence. In cross-examination, he admitted that his father had partitioned the property amongst the sons. Thus, the defendant has clearly admitted that he received the suit property in partition and would thus become an absolute owner of the property. He also admitted execution of agreement to sell.

6] The First Appellate Court, without assigning any reason, has ignored this vital evidence and admission of the defendant. It has harped upon the plaintiff's admission that the

suit property was an ancestral property. I have gone through that part of the evidence of the plaintiff. He admitted that the suit property has devolved upon the defendant as an ancestral property. This admission, however, would only indicate a fact that the defendant inherited the ancestral property. The First Appellate Court has conveniently omitted to note what had happened after the property was so devolved. The defendant, in his cross-examination, has admitted that his father has partitioned the property amongst the sons, viz., the defendant and his brothers. Once the property is partitioned, the law is well settled that such property will become absolute in favour of the partitioned persons, the defendant in the present case. The trial Court had taken note of these facts and rendered sound reasons while holding that the defendant was absolute owner of the suit property. The First Appellate Court, by ignoring the vital admissions of the defendant so also without appreciating the pleadings and evidence on record, has reversed the findings of the trial Court.

7] Thus, the reasons recorded in paragraph 13 of the judgment by the First Appellate Court for reversing the

judgment and decree passed by the trial Court are perverse and are not supported by any pleading or evidence. The First Appellate Court has further committed an error by holding that the defendant was not the exclusive owner of the suit property, by ignoring the admission in the cross-examination of the defendant that the family properties were already partitioned and that the defendant and his brothers were put in separate possession of the same.

8] Accordingly, the first substantial question of law is answered in the affirmative and the second in the negative.

9] Having answered the substantial questions of law in the manner hereinabove, the judgment of the First Appellate Court is unsustainable in law, meaning thereby, that the appellant has made out a case in his favour. Hence, the following order :

ORDER

- i] The appeal is allowed with cost.
- ii] The judgment and decree dated 23/1/2007 passed

by the Principal District Judge, Yavatmal in Civil Appeal No. 37/2005 is quashed and set-aside.

iii] The judgment and decree dated 6/8/2005 passed by the Civil Judge Junior Division, Kalamb in Regular Civil Suit No. 14/2004 is restored.

JUDGE

Sumit