



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 384/2007

Dinesh s/o Soma Patil (Bansod)
a/a 41 years, Occ. Labourer, r/o Pimpal File,
Ashok Nagar, Akola, Tq. Dist. Akola.**APPELLANT**

...V E R S U S...

1. Ananda s/o Damodar Uke,
a/a 41 years, Occ. Labourer,
2. Arun s/o Damodar Uke,
a/a 47 years, Occ. Labourer,

Both r/o Pimpal File, Ashok Nagar,
Akola, Tq. Dist. Akola.**RESPONDENTS**

Mr. S. A. Dutonde, Advocate for appellant.
None for respondents, through served.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT : 19.03.2024

DATE OF PRONOUNCING THE JUDGMENT : 22.03.2024

JUDGMENT

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

*“Whether the learned Judge of the First Appellate
Court was right in concluding that Smt. Baijubai Kanu
Uke could not legally bequeath the property by Will
deed dated 09.09.1977?”*

2. The relevant facts are as under.

On 13.04.1999, the respondents filed Regular Civil Suit
No.786/1999 against the appellant, alleging therein that the house

No. 207, situated on nazul plot No. 62, sheet no. 35-C, Akola was given on license to the appellant. The lessor of the suit property is/was Municipal Council, Akola. The appellant did not vacate the said house. The entire nazul plot no.62 was allotted on lease to one Kanu Uke, (since deceased) who was relative of respondents. After the death of Kanu Uke, his wife Baijubai inherited the suit property. According to the respondents, after death of Baijubai Uke, they being legal heirs, lease of the suit property was transferred in their favour.

3. The suit was contested by the appellant. On 02.09.1999, he filed the written statement. According to the appellant, vide registered Will dated 09.09.1977, the deceased Baijubai, widow of Kanu, bequeathed the entire suit property including the leasehold rights in favour of Soma Patil Bansod, father of the appellant. Accordingly, the appellant, after his father's death, has become owner of the suit property.

4. On 01.08.2002, the Trial Court was pleased to dismiss the suit holding that the Will propounded by the appellant was proved. The Trial Court further held that the respondents failed to prove that they were legal heirs of deceased Baijubai. The First Appellate Court, vide judgment and decree dated 11.12.2006,

allowed the appeal. The First Appellate Court held that Baijubai could not have bequeathed the suit property and thus the appellant does not become owner of the property. The First Appellate Court further held that father of respondents - Damodar Uke was legal representative of the deceased Kanu and his wife Baijubai. Accordingly, the First Appellate Court held that the respondents were in possession of the suit property.

5. In the light of the aforesaid facts, the substantial question of law is to be answered. The record indicates that there were three houses existing on plot no. 62. House no.207 was occupied by the appellant, house no. 206 was occupied by respondents and the third house was occupied by one Nathu Uke and his wife. The suit plot was nazul plot and belonging to the Government. According to the appellant, Kanu Uke was in possession of the suit plot on the strength of lease deed executed by the Municipal Council, Akola in his favour. The lease deed however is not on record. The terms of the lease are not known. The duration of the lease is also not known. Thus, the title document in respect of the suit plot has been not placed on record. In absence thereof, the appellant could not have raised the claim of ownership.

6. As stated earlier, the document of title in favour of Kanu Uke has been not placed on record. Neither the appellant nor the respondents have placed on record any document to show that rights under lease were inheritable. In fact, in absence of lease, these rights were not crystallized. Rather, the case of appellant is that suit plot is belonging to the Government. The wife of Kanu Uke cannot, therefore, inherit the suit plot and in turn cannot bequeath the same by way of will.

7. The counsel for the appellant failed to show any document showing allotment of the plot in favour of Kanu Uke or in favour of Baijubai. On the contrary, the appellant has placed on record copy of resolutions (Exh.78 and 79) passed by the Municipal Council, Akola, by which the suit plot came to be transferred in the name of the appellant's father Damodar Shivarj Uke. Thus, on one count, the appellant has based his claim in terms of Will executed by Baijubai and on the other has placed reliance upon the resolution passed by the Municipal Council allotting the suit plot in the name of his father. If the suit plot was inherited, there arises no question of allotting plot to the appellant's father by resolution.

8. As stated earlier, the appellant's case is that the suit plot was nazul plot and was belonging to the Government. If this fact is to be accepted, the appellant was duty-bound to place on record the copy of allotment letter or any other valid document showing title over the suit plot either in the name of Kanu Uke or his wife Baijubai. Having not done so, Baijubai cannot be said to be the owner of the suit plot. In turn, she had no right to bequeath the suit plot by way of Will.

9. It is pertinent to note here that the appellant is relying upon the Will registered on 09.09.1977 but has not claimed ownership for years together. He has, for the first time, in written statement filed on 02.09.1999, has disclosed the existence of will. It appears that thereafter he filed a suit bearing Regular Civil Suit No.629/2003 for declaration of ownership on the basis of the will Exh.-110. The suit was dismissed as barred by limitation by the 2nd Jt. Civil Judge Junior Division, Akola. This unexplained prolonged silence on the part of the appellant about execution of will speaks volumes of the status of the property viz. belonging to the Government.

10. The First Appellate Court has, therefore, rightly concluded that Baijubai could not legally bequeath the property by

Will. The substantial question of law is answered accordingly. Consequently, the appellant failed to make out a case in his favour. The appeal is accordingly dismissed.

11. The effect of dismissal of the appeal will have to be considered. As stated earlier, neither the appellant nor the respondents have placed on record any document showing their title over the suit property. Rather, the case of the appellant is that the suit plot belongs to the Government. In that sense, neither the appellant nor the respondents are entitled to either seek possession of the suit property or to remain in possession thereof.

12. Hence, copy of the order be served upon the Collector, Akola for taking appropriate steps for acquisition of the property, in accordance with law.

The order shall take effect on completion of eight weeks from today.

(Anil L. Pansare, J.)

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