



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

SECOND APPEAL NO.458/2007

Mahadeo alias Sahadeo s/o Shivam
Meshram, aged about 60 years,
Occ. Cultivation, r/o Nagari,
Tahsil Warora, Dist. Chandrapur.

....APPELLANT

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

1. Parwatabai wd/o Laxman Atram,
(Since deceased), through its
legal heirs.
- 1a. Ganpat s/o Laxman Atram,
aged about 50 years, Occ. Service,
r/o Kalaram Mandir, Patipura,
Chandrapur, Tq. Dist. Chandrapur.
- 1b. Madhukar s/o Laxman Atram,
aged about 46 yeas, Occ. Labour,
r/o Chiradevi, Post Bhadravati,
Chandrapur, Tq. Dist. Chandrapur.
- 1c. Prabha w/o Nanaji Madavi,
aged about 52 years, Occ. Labour,
- 1d. Meena w/o Arun Kulsunge,
aged about 43 years, Occ. Labour,
r/o Mohabata, Post Warora,
Tq. Warora, Dist. Chandrapur.
- 1e. Sushila Ashok Nagbhidkar,
aged about 40 years, Occ. Labour,
r/o c/o Nagbhidkar, Retired Nurse,
Abhyankar Ward, Mohabala Road,
Warora, Tq. Warora, Dist. Chandrapur.
2. ~~Laxman s/o Mukunda Atram.~~
(Deleted as per Reg. (J) order dated
12.07.2012.

...RESPONDENTS

Mr. Amol Mardikar, Advocate for appellant.
None for respondents, through served.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT : 22.01.2024

DATE OF PRONOUNCING THE JUDGMENT : 24.01.2024

ORAL JUDGMENT

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

“1. Whether the Courts below fell in error in dismissing the suit particularly when it is not disputed that Shivram the father of the plaintiff died in the year 1951 and the plaintiff was sole surviving coparcener at that time?

2. Did the Courts below fell in error in not holding that plaintiff was sole exclusive owner?”

2. The appellant is original plaintiff. Respondent no.1 (since deceased and now represented by legal representatives) was original defendant no.1. Name of respondent no.2-original defendant no.2 has been deleted. Respondent no.1 and his legal representatives will be hereinafter referred to as “defendant no.1” and respondent no.2 as “defendant no.2”.

3. The plaintiff has filed a suit bearing Regular Civil Suit No.18/1993 for primary relief of possession. According to the plaintiff, his grandfather Krishna and father Shivram, have jointly purchased the suit property, bearing survey nos. 35, 129 and 130, situated at village Chiradevi. Shivram died in the year 1951 and prior thereto, his father Krishna expired. It is the case of the plaintiff that he became the sole owner of the property being the only male member in the family.

4. Shivram had performed two marriages. The plaintiff has been born out of the first wedlock and the defendant no.1 has been born out of the second wedlock. Thus, the defendant no.1 is step sister of the plaintiff. Defendant no.2 is husband of defendant no.1. The plaintiff allowed the defendants to enjoy crops of suit land survey no.35 for a period of three years from 1981-82 to 1983-84 without consideration. However, defendants did not hand over the possession of the land even after passing of three years. Accordingly, the plaintiff filed the suit for possession and other ancillary reliefs.

5. The defendants contested the suit. According to them, Krishna's wife i.e. Sita, mother of Shivram was alive when Shivram expired. The defendants were living with Sita. Defendant no.1 became the owner of suit land being legal representatives of Sita. The ownership of Shivram was denied. Consequently, the claim of plaintiff of being exclusive owner of the suit property has been also denied.

6. The trial Court and first appellate Court have rendered concurrent findings that the plaintiff failed to prove his claim and dismissed the suit. The reason for dismissal is that the plaintiff has neither produced the document of title in favour of his predecessor, namely grandfather Krishna and father Shivram nor any other evidence to prove his title. The 7/12 extract relied upon by plaintiff did not also support his claim. Rather name of defendant no.1 is shown as owner in

the land bearing survey no.35 and the names of Sahadeo Shivram Meshram (Father of plaintiff), Shbhadri Laxman, Parvati Laxman, Shakuntala Chintaman, Bulki Shivram, etc. been mentioned in 7/12 extract of the agricultural land bearing survey nos. 129 and 130.

7. Mr. Mardikar, learned counsel for the appellant, submits that the status of acquiring suit properties by the plaintiff's father and grandfather is not disputed. However, he failed to show from the judgments passed by both the courts below or from the documents placed before the trial Court that the suit property was acquired by plaintiff's father and grandfather. He then submits that the relationship between the parties is not disputed as also death of Shivram in the year 1951. Accordingly, he submits that when Shivram, father of plaintiff has expired in the year 1951, the plaintiff being the sole surviving coparcener, would become exclusive owner of the suit property but the Courts below have committed error in not recognizing this fact.

8. I do not find any substance in the submissions. The fact that Shivram, plaintiff's father expired in the year 1951 is of no relevance inasmuch as the plaintiff failed to prove ownership of his father and grandfather over the suit property. Rather, the document, which he relied upon viz.7/12 extracts (Exh.-56 and 72) for survey no.35, indicate that the defendant no.1 is shown as owner and possessor of the said property. So far as the field properties bearing Gat Nos. 129 and

130 are concerned, the 7/12 extracts Exh.-51 and 52 indicate names of five persons as owners, one of whom namely Sahadeo, is father of plaintiff. Thus the plaintiff's own document falsified his claim.

9. In the circumstances, it cannot be said that the Courts below fell in error in dismissing the suit despite the fact that the plaintiff's father has expired in the year 1951. First substantial question of law is according answered in the negative.

10. Having answered the first substantial question of law in the negative, the second question of law does not survive. Resultantly, there is no merit in the appeal. The appeal is dismissed. No order as to costs.

(Anil L. Pansare, J.)

kahale