



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 SECOND APPEAL NO. 782 OF 2022

Dadarao Bhagaji Mhaske

....Appellant

VERSUS

Balwant Manikrao Ragade

.....Respondent

.....

Mrs. P. V. Langhe, Advocate for Appellant.

Mr. K. J. Suryawanshi, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 20th FEBRUARY, 2025.

PER COURT :

1. This appeal under Section 100 of Code of Civil Procedure takes exception to the concurrent judgments and decree passed by the Trial Court in Regular Civil Suit No. 1817/2012 confirmed in Regular Civil Appeal No. 231/2018.

2. Appellant/original Plaintiff filed suit for declaration of ownership and perpetual injunction in respect of the suit property bearing Survey No. 192/1 situated at village Harsool, Tq. & Dist. Aurangabad.

3. It is the case of the Plaintiff that Plaintiffs' grand-father was the original owner of the lands Survey Nos. 192/1 and 192/6 admeasuring 20 R each. Plaintiff claims that some of the portion of the said land was bequeathed to the Plaintiff and his name was accordingly entered in the revenue record. According to the Plaintiff, there was execution of sale-deed in respect of Survey Nos. 192/1 and 192/6 in favour of Defendant/society. In this regard, a suit came to be filed bearing Special Civil Suit No. 549/1994. Compromise arrived at between the parties and decree came to be passed in terms of compromise Exhibit 38 in Special Civil Suit No. 549/1994. Plaintiff claims that when the Defendant started denying ownership of Plaintiff over the suit property, cause of action arose for him to file the suit. Accordingly, suit came to be filed in the year 2012 being Regular Civil Suit No. 1817/2012.

4. Defendant filed written statement and denied the contentions of Plaintiff. Reference is made to Special Civil Suit no. 549/1994 and decree of compromise passed therein. Trial Court framed issues including the issue of limitation and dismissed the suit. Appeal filed by Plaintiff also came to be dismissed.

5. Learned counsel for Plaintiff raises objection that without any written statement filed by the Defendant raising objection to the limitation, Trial Court has committed error in framing the issue of limitation. In this regard it is material to note that on the basis of the pleadings in the plaint, if it is found by the Court that the suit is barred by limitation, it is obligatory on the part of the Court to frame such issue. Specific objection need not be raised by Defendant in this regard. Pertinently, the issue of limitation was framed without any objection from Plaintiff. Parties led evidence on the said issue. Therefore, now it is not open for the Plaintiff to take any exception to the framing of such issue.

6. In any case, perusal of the plaint itself indicates that in Special Civil Suit No. 549/1994, compromise decree was passed on 09.01.2001. Exhibit 68 i.e. terms of compromise indicate that land bearing Survey No. 192/6 admeasuring 40 R was given to the Plaintiff whereas society's right over Gat No. 192/2 to the extent of 40R was accepted by the Plaintiff. It is not the case of Plaintiff that the said decree was obtained by fraud. Plaintiff does not challenge the said compromise decree. In view of this fact, the suit is barred by

limitation and as such there is no perversity in the findings recorded by the Trial Court which is confirmed by the First Appellate Court.

7. It is sought to be argued on behalf of Plaintiff that Defendant in his cross-examination has given certain admissions which according to her, indicate that the parties did not claim that 32 R land was given to the society and the remaining land was given to the share of Plaintiff. Relying upon this admission so also in view of the fact that Regular Civil Suit No. 441/2001 came to be filed by society taking exception to the compromise and compromise decree passed in Special Civil Suit No. 549/1994, it is her contention that the Defendant/society is now not permitted to claim right over the entire land to the extent of 40R.

8. This is not a suit filed by Defendant/society seeking any declaration. There is no counter claim filed by the society. It is for the Plaintiff to stand on his own strength without taking aid of the alleged admissions of the Defendant. Suffice it to say that dismissal of the suit filed by the society being Regular Civil Suit No. 441/2001 has no bearing on the outcome of the present case on merit. As

such, this Court finds no substantial question of law involved in this appeal. Hence, appeal stands dismissed.

(R. M. JOSHI)
Judge

dyb