



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 SECOND APPEAL NO. 214 OF 2024
WITH CIVIL APPLICATION NO. 13679 OF 2023
IN SA/214/2024

PRABHAKAR DULAJI LAKHE
VERSUS
ASHOK DULAJI LAKHE AND OTHERS

Mr. A. S. Kulkarni, Advocate for the appellant
Mr. A. I. Deshmukh, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.
DATE : 21st FEBRUARY, 2025

PER COURT :-

1. This appeal is filed by original defendant in R.C.S. No. 584/2012 (Old Spl.C.S. No. 82/2005) under Section 100 of the Code of Civil Procedure only to the extent of challenging the findings recorded by the First Appellate Court. In fact the First Appellate Court dismissed the appeal however since the said final order dismissal is not against the present appellant, he does not intend to challenge the same. The challenge in this appeal is restricted to the findings recorded by Appellate Court, which are claimed to be against the appellant.

2. Parties are referred to as 'plaintiff' and 'defendants' for the sake of convenience.

3. It is sought to be contended by the learned counsel for

defendant No.3 that defendant No.3 never admitted the execution of the memorandum of partition dated 22/07/2022, however, the First Appellate Court has committed error in framing point for consideration as follows:

“Whether defendant Nos.1 to 3 have proved that oral partition of which, memorandum of partition was prepared on 22/07/2022 and that, the same was acted upon by the parties to the suit?”

4. It is his submission that in written statement there is specific denial by this defendant about execution of any such memorandum of partition. It is his next contention that the First Appellate Court has committed error in appreciating the pleadings of the parties and evidence on record and the findings recorded by the Trial Court with regard to the nature of suit properties is not considered by the First Appellate Court. It is his submission that on the basis of findings recorded by the First Appellate Court, now the plaintiff has filed fresh suit and therefore setting aside of those findings is essential.

5. Leaned counsel for the plaintiff opposed the said contention by drawing attention of the Court to the evidence on record more particularly cross examination of defendant No.3 and the findings recorded by the First Appellate Court. It is his contention that it was within the jurisdiction of the First Appellate Court to reappraise the evidence and to record findings afresh without taking into consideration

the findings recorded by the First Appellate Court. It is his submission that while entertaining Second Appeal such exercise is not permissible and no interference in finding of fact can be done, unless perversity is shown therein.

6. Record indicates that the plaintiff filed suit for partition. The said suit came to be dismissed by the Trial Court. The appeal filed by the plaintiff also was rejected. The First Appellate Court while deciding appeal recorded findings of fact in the said judgment.

7. Now question arises before this Court is as to whether the recording of findings of fact is perverse in order to cause interference therein in exercise of power under Section 100 of CPC. As rightly pointed out by the learned counsel for the plaintiff it is not open for this Court to reappraise the evidence and recorded independent findings on fact.

8. The First Appellate Court has recorded findings in respect of the execution of memorandum of partition (Exhibit 94). Observations made to that effect in paragraph Nos. 23 and 24 read thus:-

"23] Precisely here the controversy needs to be addressed revolving around execution of Memorandum of Partition (Exh. 94). The plaintiff has claimed in his evidence that, it was executed by all the parties to the document at Village Malegaon on 22/07/2002. As mentioned earlier, even the defendant Nos. 1 and 2 have admitted the execution of the said Memorandum of Partition (Exh. 94) and that, it is acted upon. So far as,

the defendant No. 3 is concerned, though, he denied in the written statement (Exh. 42) about its execution, during his evidence, he did not deny his signature on Memorandum of Partition (Exh.94).

24] Very interestingly, he claimed no knowledge about the execution of Memorandum of Partition (Exh.94) on 22/07/2002. At the same time, when confronted with the document, he claimed that, he has no complaint about the said document dated 22/07/2002 and at the same time, has admitted his signature. He however, claimed that, it was obtained by deception. However, such a case of deception for the first time, claimed during the cross-examination by the defendant No. 3 has to be rejected. Therefore, on probabilities, I have no hesitation to conclude that, the defendant No.3 is one of the signatory to Memorandum of Partition (Exh. 94), he has voluntarily signed the document and has also derived the benefits. Therefore, from his cross-examination, it is clear that, he has also received several properties, which were dealt by him after the Memorandum of Partition (Exh. 94)."

9. These observations are required to be seen in the context of the evidence of defendant No.3, which is reproduced below:-

"I have not lodged any complaint anywhere against any of my brother in respect of the document Exh. 94 dt. 22.07.2002. It is true that for the first time in my affidavit of evidence I have stated that by cheating me, my signature has been obtained by plaintiff on document Exh. 94."

10. The evidence of defendant No.3 is sufficient to hold that the signatory to the document Exhibit 94. Further when he admits that he has not made any complaint that grievance with regard to the said document, findings recorded by the First Appellate Court in aforesaid paragraphs cannot be termed as perverse. Mere inadvertent framing of point for consideration, would not become a ground to cause interference

in the order, more particularly when parties were fully conscious of their respective care before Courts below. Thus, no substantial question of law is involved in this appeal. Hence, appeal stands dismissed.

11. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp