
(2014) 11 BOM CK 0099
In the Bombay High Court
Case No : Second Appeal No. 723 of 2013

Dhondiba

APPELLANT

Vs

Rajendra

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2014) 11 BOM CK 0099

Hon'ble Judges : R.G. Ketkar, J

Bench : Single Bench

Advocate : Gaware N.V, Advocate for the Appellant; Ghatge M.V. i/b
Gadegaonkar B.N, Advocate for the Respondent

Judgement

R.G. Ketkar, J.—Heard Mr. N.V. Gaware, learned counsel for the appellants and Mr. M.V. Ghatge, learned counsel for respondent No. 1 at length.

2. By this Appeal u/s 100 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), plaintiff has challenged the Judgment and decree dated 28/12/2009 passed by learned Civil Judge Senior Division, Nanded in Spl.C.S. No. 56/2006, as also the Judgment and decree dated 08/08/2013 passed by learned District Judge1, Nanded in R.C.A. No. 163 of 2012. By these orders, the Courts below dismissed the Suit instituted by appellants for declaration that the sale deed dated 11/10/2005 executed by respondent No. 2 in favour of respondent No. 1 in respect of plot No. 1-11-48 admeasuring 16" x 75" (for short, "suit plot") is illegal and not binding on the plaintiffs and for perpetual injunction restraining the defendants from obstructing their possession. The parties shall hereinafter required to be referred to as per their status before the trial Court.

3. In support of this Appeal, Mr. Gaware strenuously contended that the sale deed dated 11/10/2005 executed by defendant No. 2 in favour of defendant No. 1 is illegal, null and void as defendant No. 2 was not legally competent to transfer suit plot in favour of defendant No. 1. Defendant No. 2 had no right, title and interest in the suit plot so as to pass on better title to defendant No. 1.

Defendant No. 2 claims right in the suit plot on the basis of alleged consent deed dated 17/09/1990. In the first place, by that consent deed, Laxman Paraji Charumbekar relinquished his right, title and interest in CTS No. 10963 in favour of plaintiff No. 1 Dhondiba and defendant No. 2 Chudaman. The said instrument is not a registered instrument. He, therefore, submitted that the said document is not admissible in evidence. He submitted that the consent deed is a fraudulent document. Since defendant No. 2 did not acquire any right, title and interest by virtue of the consent deed, he could not have passed on better title in favour of defendant No. 1. He, therefore, submitted that Appeal requires consideration as it involves substantial questions of law.

4. On the other hand, Mr. M.V. Ghatge supported the impugned orders. He invited my attention to the relevant discussion in the impugned orders, as also the oral evidence and in particular paragraph 16 of the testimony of P.W. 1 Dhondiba. He submitted that the Courts below after appreciating evidence on record, have concurrently dismissed the suit and, therefore, no case is made out for invoking the powers u/s 100 of C.P.C.

5. I have considered the rival submissions of the parties. I have also perused the material on record as also original record. I was also taken through the pleadings of the parties, as also oral as well as documentary evidence on record.

6. As noted earlier, plaintiff has instituted Suit for declaration that the sale deed dated 10/11/2005 executed by defendant No. 2 in favour of defendant No. 1 in respect of the suit plot is illegal and not binding on him and for perpetual injunction restraining the defendants from obstructing their peaceful possession. From the material on record, it is evident that one Marotirao Charumbekar had purchased plot No. 1-8-164 admeasuring 32" x 150" in public auction. In the year 1972, Marotirao Charumbekar had alienated said plot in favour of defendant No. 1 Dhondiba and one Paraji for consideration of Rs. 2,000/ [Rupees Two Thousand only]. This plot was divided into plots No. 1-11-47 and 1-11-48 Accordingly, on 01/12/1972, the names of these persons were mutated in the record of Municipal Council, Nanded. It is the case of plaintiffs that boundaries of plot of Paraji bearing No. 1-11-47 are as under :

The other plot was allotted to plaintiff No. 1 Dhondiba bearing No. 1-11-148 and the boundaries are as under :

7. Plaintiff No. 1, therefore, claims that he is in possession of plot No. 1-11-148 as owner. He entered into agreement of sale with plaintiff No. 2 on 20/05/2005 in respect of area admeasuring 32" x 150". Plaintiff No. 1 delivered possession to the plaintiff No. 2 after execution of agreement and since then plaintiff No. 2 is in possession.

8. As against this, it is the case of defendant No. 1 that plot No. 1-8-164 was divided in three parts. Half portion was allotted to Paraji and the said plot was numbered as plot No. 1-11-47 admeasuring 32" x 75", bounded as under :

The remaining portion of plot No. 1-8-164 from North side was divided between plaintiff No. 1 and defendant No. 2, who are cousins. The Municipal Council had given plot No. 1-11-148 admeasuring 16" x 75" allotted to defendant No. 2. The portion allotted to plaintiff No. 1 Dhondiba was numbered as plot No. 1-11-149 admeasuring 16" x 75". Thus, plot No. 1-8-164 was divided into three parts bearing Nos. 1-11-47 (half portion admeasuring 2400 Sq. Ft. given to Paraji, 1-11-148 (1/4th portion admeasuring 1200 Sq. Ft. which was allotted to defendant No. 2) and 1-11-149 (1/4th portion admeasuring 16" x 75" which was allotted to plaintiff No. 1). Defendant No. 1, therefore, contended that plaintiff has no concern with the suit plot.

9. Mr. Gaware submitted that defendant No. 2 had no title to convey the said plot in favour of defendant No. 1. The consent deed is fraudulent. It is not a registered instrument and, therefore, it does not amount to valid relinquishment. The document is also inadmissible in evidence.

10. Mr. Gaware relied upon the Judgment of the Apex Court in the case of Sneh Gupta Vs. Devi Sarup and Others, .

11. Perusal of the pleadings of the parties clearly shows that no case was made out by the plaintiff that the consent deed is fraudulent and/or it is invalid. In fact, the plaint is totally silent as regards the consent deed dated 17/09/1990. Perusal of the Written Statement also shows that the consent deed is also not referred to and relied upon by the defendants. Defendants are claiming right on the basis of partition effected between Damaji and Dinappa. Damaji is grandfather of plaintiff No. 1 Dhondiba and Dinappa is father of defendant No. 2. Damaji and Dinappa were real brothers and partition was effected between them. As noted earlier, plaintiff contended that plot No. 1-8-164 was divided into two plots namely plot of Paraji bearing No. 1-11-47 and plot of plaintiff No. 1 Dhondiba bearing No. 1-11-148. As against this, according to defendants, said plot was divided into three plots namely plot of Laxman [1-11-147, now new No. 1-18-75] admeasuring 2400 Sq.Ft. , plot of defendant No. 2 Chudaman [1-11-148, now new No. 1-18-76] admeasuring 1200 Sq.Ft. and plot of plaintiff No. 1 Dhondiba [1-11-149, now new No. 1-18-77] admeasuring 1200 Sq.Ft. The Courts below observed that the contentions of the defendants in that regard are corroborated by Exhs. 101 to 103, which are extracts from tax register. That apart, P.W. 1 in cross examination admitted that he has no concern with suit plot i.e. 1-11-148. The Courts below, therefore, observed that under such circumstances, half portion i.e. plot No. 1-11-47 is owned and possessed by Laxman Charumbekar, 1/4th portion i.e. plot No. 1-11-148 is owned and possessed by defendant No. 2 and remaining 1/4th portion i.e. 1-11-149 is owned and possessed by plaintiff No. 1 Dhondiba. P.W. 1, therefore, has no right to sell half portion i.e. area of 32" x 75" to plaintiff No. 2 or any one else. P.W. 1 Dhondiba also admitted the fact of partition. Even father of plaintiff No. 2 Laxman admitted in paragraph 5 of his deposition about partition. Thus, defendant No. 2 is claiming right in the suit plot on the basis of partition. The Courts below observed that D.W. 1 admitted in

cross examination that Damaji and Dinappa were real brothers. In view thereof, I do not find that the Courts below committed any error in dismissing the Suit. The findings recorded by the Courts below are based upon appreciation of evidence on record. It can not be said that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of the evidence on record, no reasonable or prudent person would have come to that conclusion. Merely because another view is possible, that by itself is no ground for invoking powers u/s 100 of C.P.C.

12. In the result, the Appeal fails and the same is dismissed as it does not involve substantial question of law.

13. In view of dismissal of present Appeal, Civil Applications No. 13121 of 2013 and 6717 of 2014 do not survive and the same are dismissed.

At this stage, Ms. S.G. Sontakke, learned counsel for the appellants orally prays for continuation of the status quo order dated 10/10/2013 for the period of eight weeks from today. Mr. M.V. Ghatge states that in stead of eight weeks, the status quo order may be continued for the period of four weeks. Having regard to the fact that status quo order is operating since 10/10/2013, I find that the request made by Ms. Sontakke is reasonable. Hence, the order of status quo dated 10/10/2013 shall remain in force for a period of eight weeks from today. Order accordingly.