
(2011) 05 GUJ CK 0053

In the Gujarat High Court

Case No : Second Appeal No's. 302 and 303 of 1988

Ranchhodbhai Manilal Patel

APPELLANT

Vs

Bai Alkhiben and Another

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 05 GUJ CK 0053

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Vasuben P. Shah and Paurami B. Sheth, for the Appellant; Bharat Jani, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Both these appeals involve common questions on law and facts and hence, they are disposed of by this common judgment.

2. Second Appeal No. 302/1988 is directed against the judgment and order dated 15.10.1988 passed by the learned Asst. Judge, Sabarkantha at Himmatnagar in Civil Appeal No. 28/1986 whereby, the said appeal was dismissed and the judgment and decree dated 21.03.1986 passed by the learned Civil Judge (J.D.), Prantij in Regular Civil Suit No. 51/1983 was confirmed.

Whereas, Second Appeal No. 303/1987 is directed against the judgment and order dated 15.10.1988 passed by the learned Asst. Judge, Sabarkantha at Himmatnagar in Civil Appeal No. 5/1987 whereby, the said appeal was allowed and the judgment and decree dated 21.03.1986 passed by the learned Civil Judge (J.D.), Prantij in Regular Civil Suit No. 41/1983 qua rejecting the relief of grant of permanent injunction against the Appellant herein was set aside and the same was allowed.

3. The facts in brief are that the Appellant herein had preferred Regular Civil Suit No. 51/1983 against the Respondents before the Court of learned Civil Judge, Prantij for permanent injunction by way of restraining the Defendants from

causing any obstruction in respect of his possession of the property, as described in the plaint of the suit. In the said suit, it was inter alia stated that the suit property belonged to one Patel Narandas Maganbhai and that by way of registered Will dated 06.12.1982, the entire suit property was bequeathed in favour of the Appellant. Pursuant to the death of said Patel Narandas Maganbhai, the Appellant took possession of the suit property. However, the Defendants were trying to cause obstructions in his possession and therefore, the suit came to be preferred.

4. Defendant No. 1 in Regular Civil Suit No. 51/1983 filed by the Appellant herein had also preferred another suit being Regular Civil Suit No. 41/1983 against the Appellant herein inter alia stating that she is the daughter of said Patel Narandas Maganbhai and that the suit properties were the ancestral properties of her father. It was stated that the Appellant herein got a fraudulent will executed in his favour in respect of the suit properties and thereby, claimed ownership of the suit properties.

5. Both the suits were heard independently by the trial Court. Thereafter, by judgment and decree dated 21.03.1986, Regular Civil Suit No. 41/1983 was partially decreed whereby, the trial Court held the Will in question to be void but, no permanent injunction was granted against the Appellant herein. So far as Regular Civil Suit No. 51/1983 is concerned, the same was dismissed, vide judgment and decree dated 21.03.1986.

6. Being aggrieved by the above judgment and decree passed by the trial Court, the Appellant herein preferred Civil Appeal No. 28/1986 whereas, Defendant No. 1 herein preferred Civil Appeal No. 5/1987. Civil Appeal No. 28/1986 preferred by the Appellant herein was dismissed vide order dated 15.10.1988 whereas, Civil Appeal No. 5/1987 preferred by Defendant No. 1 herein was allowed whereby, the relief of permanent injunction against the Appellant herein, which was rejected by the trial Court, came to be allowed and permanent injunction was granted against the Appellant herein.

7. Against the aforesaid orders, the Appellant has preferred the present appeals.

8. Heard learned Counsel for the respective parties and perused the documents on record. The Appellant herein had based his case on the Will dated 06.12.1982 purported to have been executed by Late Patel Narandas Maganbhai in favour of the Appellant herein by which the entire suit property was bequeathed in his favour. However, the legality of the said Will was challenged by Defendant No. 1 herein by way of filing R.C.S. No. 41/1983 before the trial Court, which came to be partly allowed and the said Will was held to be illegal and void, by judgment and decree dated 21.03.1986. It may be noted that the Appellant herein had not challenged the said part of the decree by way of filing any appeal or cross objections and hence, the said part of the decree holding the Will in question to be illegal has become final.

9. It is a settled position of law that entries made in the revenue records does

not prove the ownership of any person in respect of any property. In his cross-examination before the trial Court, the Appellant herein had admitted that the suit properties were ancestral properties. Therefore, even if the Will is believed to be true, the Testator had right to bequeath only his share of the property and not the entire ancestral property. After appreciating the evidence on record, both the Courts below found that the Appellant herein was not in lawful possession of the suit property. I have gone through the records the case extensively and I find the Courts below have not committed any error while passing the impugned orders. I am in complete agreement with the concurrent findings recorded by both the Courts below and hence, find no reasons to entertain these appeals.

10. For the foregoing reasons, both the appeals are dismissed.