

(2011) 09 BOM CK 0186

In the Bombay High Court

Case No : Second Appeal No. 713 of 2010 with Civil Application No. 1910 of 2010

Shankar B. Mane and Others

APPELLANT

Vs

Babu G. Mane and Others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Bombay Hereditary Offices Act, 1874 — Section 4

Citation : (2012) 3 ALLMR 522 : (2012) 2 BomCR 831 : (2012) 1 MhLj 58

Hon'ble Judges : Godbole G.S., J

Bench : Single Bench

Advocate : Prathmesh Bhargude, for the Appellant; Datta H. Pawar, for respondent No. 1., for the Respondent

Final Decision : Dismissed

Judgement

Godbole G.S., J.—Heard the learned Advocates for the parties. Regular Civil Suit No. 1044 of 2003 was filed by respondent Nos. 1 to 3 in the Court of learned Civil Judge, Senior Division, Kolhapur for partition and separate possession by claiming that though there was a prior partition of the ancestral properties, the suit properties which were Watan Inam Lands and were, therefore, inpartiable had not been partitioned. Defendant Nos. 1 to 3 admitted the relationship but contended that deceased Bapu who was brother of plaintiff No. 1 Babu and Tukaram (father of plaintiff Nos. 2 and 3) was exclusive owner of the said Watan Inam Lands which have been re-granted to him alone after his Watan was abolished by Bombay Merged Territories and Miscellaneous Alienations Abolition Act, 1955. The suit was also opposed by raising a plea of limitation by contending that the time will commence from 1976. By judgment and Order dated 13th March, 2009, the learned Jt. Civil Judge, Junior Division, Kolhapur decreed the suit and awarded the decree for partition and separate possession to the extent of 1/3rd share. While doing so, the judgment of the Supreme Court in the case of Abubakar Abdul Inamdar (dead) by LRs. and others Vs. Harun Abdul Inamdar and Others, and other judgments were relied upon.

2. Aggrieved by this decree, original defendant Nos. 1 to 3 filed Regular Civil Appeal No. 117 of 2009 which had been dismissed by the impugned judgment and Order dated 7th August, 2010 passed by the learned District Judge, Kolhapur and the cross-objections filed by the plaintiffs are allowed and an enquiry in the mesne profits has been ordered. While doing so, apart from relying on the judgment in the case of Abubakar A. Inamdar (supra), District Court has also relied on the judgment of the Full Bench of this Court in the case of Chinda Manji Koli (Since deceased) through LRs. (Bhatu Chinda Koli, Navtar Chinda Koli, Smt. Dhrupadabai Chinda Koli and Sou. Shantabai Rajaram Koli) Vs. Manga Daga Koli, , which in turn relied upon the judgment of the Supreme Court in the case of Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil and Others, . On the question of limitation, it is held that the suit is governed by Article 110 of the Schedule of the Indian Limitation Act, 1963.

3. On 22nd September, 2011 while advancing the submissions, Mr. Bhargude had submitted that the aforesaid two judgments of the Supreme Court are passed on concession of the learned Advocates appearing therein. The hearing was deferred with a view to enable Mr. Bhargude to consider the said submission in the light of the fact that this judgment had followed the law laid down by judgment of three Judges of the Supreme Court in the case of (Nagesh Bisto Desai and Others Vs. Khando "Tirmal Desai and Others), reported in (1982)2 S.C.C. 794. Mr. Bhargude submits that the aforesaid judgment in the case of Nagesh Bisto Desai (supra) arose out of provisions of different Watan Abolition Act, the said judgment lays down a principle which will not be applicable in case of other Watan Abolition Acts including the Bombay Merged Territories and Misc. Alienations Abolition Act, 1955. The said judgment essentially interprets the word "Watandar" as used in section 4 of the Bombay Hereditary Offices Act, 1874. In my opinion, said judgment of the Supreme Court is a complete answer to the submission of Mr. Bhargude because the said land had been regranted only in favour of the deceased father of the appellant and, hence, the suit for partition and separate possession was maintainable. Even otherwise, on a careful reading of the earlier two judgments of the Supreme Court in the case of Abubakar A. Inamdar (supra) and Kalagonda Balgonda Patil (supra), it is difficult to accept the submissions that the said judgments were delivered on the basis of any concession. In fact, in the judgment of Abubakar A. Inamdar (supra), the Supreme Court had held that principally it would make no difference even if the Watandar were Mohmedans and it was observed that the once the Inam was abolished and regrant was given to the members of family of Watandar, this group of people called as Watandars were definitely entitled to claim their respective shares in accordance with law of shariyat.

4. Two other submissions were advanced namely that since there was admittedly a prior partition in respect of the remaining ancestral property, and since according to the plaintiff, the suit properties which were Watan land had not been partitioned on account of the impartibility attached to them, the burden of showing that the remaining properties continued to be joint was on the plaintiffs

and according to Mr. Bhargude, that burden has not been discharged. The second submission was based on issue of limitation and Mr. Bhargude contends that though the ouster may not have been expressly pleaded in the Written Statement, the Court should have considered the defence of ouster and, hence, suit should have been dismissed.

5. I have considered both the submissions. In so far as the question of nature of properties being ancestral is concerned, it is clear that on the basis of proper appreciation of the documentary evidence on record it has been held by the Trial Court and District Court that the suit properties were Gadkari Inam lands standing in the name of Bala Bin Babu Mane and after his death in the year 1937, they were assigned in favour of his son Ganu-father of plaintiff No. 1 and grand father of defendants. These findings are pure findings of facts and the plaintiffs have sufficiently discharged the burden cast upon them. Hence, there is no merit in the first submission. Equally, the second submission is also without substance. To set up the defence of limitation, ouster is to be specifically pleaded and proved. Defendant Nos. 1 to 3 had claimed exclusive ownership in the suit properties and had never claimed ouster.

6. No other submissions were advanced. No substantial question of law arises. Second appeal is dismissed. On account of dismissal of the Second Appeal, Civil Application No. 1910 of 2010 does not survive and the same is also disposed off.