
(2009) 09 BOM CK 0083
In the Bombay High Court
Case No : Second Appeal No. 591 of 1990

Shankar Dattu Gosavi	Vs	APPELLANT
Sonabai Dattu Gosavi and Others		RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 2 BomCR 894

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : A.M. Kulkarni, for the Appellant; S.G. Deshmukh, for Respondent Nos. 1 to 4 and S.R. Page, instructed by S.G. Page, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The Second Appeal has been admitted on the following substantial questions of law:

(a). Whether the sale proceeds of the plot which formally belonged to the joint family and which was sold on 6th August, 1965 for Rs. 1,000/-can be considered as a sufficient nucleus for purchasing the land bearing Gat No. 237 on 23rd September, 1969 for Rs. 5,000/-?

(b). Whether a presumption can be raised that the land bearing Gat No. 237 is part of the joint family property, in the absence of any evidence led by the plaintiffs with regard to the income from the joint family property ?

2. The facts giving rise to the present Second Appeal are as follows :

3. One Dattu who was married to Sonabai died in 1962. He was the father of the plaintiffs and defendant No. 1. Defendant No. 1 was the eldest male member of the family after the death of Dattu and he managed the joint family property. The land bearing Gat No. 237 (original Survey No. 55/1) was purchased under a registered sale deed dated 23rd April, 1969 on payment of a consideration of Rs.

5,000/-. This land bearing Survey No. 55 was originally granted to the forefathers of Dattu and was inherited by him and his brothers Govind and Annu. Survey No. 55 was partitioned into three shares Survey Nos. 55/1, 55/2 and 55/3. Dattu received as his share Survey No. 55/3 whereas Survey No. 55/1 was allotted to the share of Annu. Survey No. 55/1 was later numbered as Gat No. 237 and land bearing Survey No. 55/3 was allotted Gat No. 239. Undisputedly, the land bearing Gat No. 237 was purchased under a registered sale deed in the name of defendant No. 1 i.e. the present appellant. The plaintiffs i.e. the present respondent Nos. 1 to 4 filed Regular Civil Suit No. 340 of 1982 seeking partition of the joint family property, including land bearing Gat Nos. 237 and 239, besides other immovable properties. The plaintiffs also sought mesne profits @ Rs. 1,400/-per year from defendant No. 1.

4. Defendant No. 1 contested the suit by contending in the written statement that the parties belonged to the Nomadic Tribe Gosavi and the concept of joint family status did not exist in the community. He, therefore, denied that he was the manager of the joint family. According to him, the land bearing Gat No. 239 was held by the Saramjamdar, Chavan Himmat Bahaddur. He had granted the land to Dattu for rendering religious services to propitiate the souls of the forefathers of the Saramjamdar. According to defendant No. 1, land bearing Gat No. 239 was, therefore, Inam land which he inherited on account of the services rendered by him for the Saramjamdar, after the death of Dattu. It was, therefore, contended that the land bearing Gat No. 239 was impartiable. As regards land bearing Gat No. 237, he contended that it was self-acquired property as he had purchased it out of the income which he received from legal and illegal means. He, therefore, submitted that both the lands did not fall within the family hotch pot and, therefore, were impartiable.

5. The trial court on the basis of the evidence led before it held that the plaintiffs had proved that the aforesaid two lands were part of their ancestral property. It further held that the defendant was unable to prove that the land bearing Gat No. 239 was impartiable. As regards land bearing Gat No. 237, the trial court held that the defendant had not been able to prove that the land had been purchased out of his own income and was therefore not liable to be partitioned. The trial court, therefore, concluded that the plaintiffs had proved that they were entitled to decree of partition and separate possession of its family property. It was held that they had a 70 paise share in the suit property and that they were entitled to mesne profits of Rs. 2,800/-. The trial court disbelieved the evidence led on behalf of the defendant that he had acquired land bearing Gat No. 237 from his own income and was, therefore, self-acquired property. The trial court concluded that the land had been purchased from the income of the joint family property as well as the amount of Rs. 1,000/obtained after the sale of one of the joint family properties. As regards land bearing Gat No. 239, the trial court did not accept the case of defendant No. 1 that it was Inam land and therefore impartiable as the 7/12 extract of this property, which was produced in court, did not indicate that it was Inam land.

6. The appellate court has confirmed the view of the trial court. The appellate court has held that the defendant No. 1 did not place any document on record to indicate that the land bearing Gat No. 239 was impartible because it was Inam land and had been granted to him by the Saramjamdar. The appellate court held that after the enactment of the Inam Abolition Act, the defendant No. 1 could not claim to be entitled to the land bearing Gat No. 239 as his own property.

7. The learned Advocate appearing for defendant No. 1 submits that the evidence on record clearly indicates that the land bearing Gat No. 237 could not have been purchased from the nucleus of the joint family property and that the income of the family was not such that it was possible to purchase such property. The learned Advocate further submits that the trial court had incorrectly cast the burden on him to prove that the land bearing Gat No. 237 was self-acquired property. He submits that it was for the plaintiffs to establish that the property was a part of the joint family property and they having failed to discharge that burden, the appellant-defendant No. 1 was not required to prove that the property was self-acquired property.

8. With the assistance of the learned Advocates appearing for the parties I have perused the impugned judgments and I find that both the courts below have concurrently held that defendant No. 1 had failed to establish that the property bearing Gat No. 237 was self-acquired property. In my view, the submission of the learned Advocate for the appellant that the burden had incorrectly been cast on the defendants to prove that the property was self-acquired is unsustainable. In fact, it is only after both the courts below were satisfied that the plaintiffs had discharged the burden of proving that it was joint family property that the onus had shifted to defendant No. 1. Both the courts below have on consideration of the evidence, which I have also scanned, concluded that the nucleus available for purchasing the land bearing Gat No. 237 was not just Rs. 1,000/- as claimed by defendant No. 1 but included the income derived from the joint family property.

9. As regards Gat No. 239, the learned Advocate for defendant No. 1 submits that this land was impartible since it was Inam land. He submits that the statement of Gangabai, i.e. the mother of Dattu, had been recorded earlier when Dattus father expired wherein she has stated that the Saramjamdar, Chavan Himmat Bahaddur, had allotted land to her husband and after his death it should be continued in the name of Dattu who was rendering service to propitiate the souls of the forefathers of the Saramjamdar. He submits that this statement is sufficient to indicate that land bearing Gat No. 239 had been allotted only to defendant No. 1 and, therefore, was impartible.

10. Both the trial court and the appellate court have considered the evidence on record and held that the 7/12 extract in respect of land bearing Gat No. 239, which was originally part of Survey No. 55 did not indicate that it was Inam land. On perusing the evidence, I find that the courts below have not committed any error in concluding that the property was not Inam land. Admittedly, the land bearing Gat No. 239 had been carved out from Survey No. 55 which was,

according to defendant No. 1, a part of the saramjamdars property. The Saramjamdar had engaged the father of Dattu, i.e. Ramgiri, to perform religious services for which he had given him land bearing Survey No. 55. After the death of Ramgiri, his wife Gangabai declared that the property should thereafter stand in the name of Dattu. Survey No. 55 was admittedly partitioned into Survey Nos. 55/1, 55/2 and 55/3. Dattu inherited Survey No. 55/3 whereas his brothers Govind and Annu inherited Survey Nos. 55/1 and 55/2 respectively. If according to defendant No. 1, Survey No. 55/3 which was renumbered as Gat No. 239 could not be partitioned because it was Inam land, then the partition of Survey No. 55 itself could not have been effected. The very fact that Survey No. 55 had been partitioned and each of the sons of Ramgiri who had been allotted this land were in separate possession of their shares indicates that the land bearing Gat No. 239 could not be considered as Inam land.

11. The learned Advocate for the appellant has relied on the judgments of the Supreme Court in the case of Shri Hafazat Hussain Vs. Abdul Majeed and Others, and in the case of Bondar Singh and Others Vs. Nihal Singh and Others, to contend that in spite of concurrent findings of fact recorded by the trial court and the lower appellate court, the High Court while considering a Second Appeal can always ascertain whether the courts below have ignored evidence on record or have wrongly cast the burden on a party or had drawn inferences which are unsustainable on the basis of the evidence on record or the findings are perverse.

12. Having considered these judgments, I am of the view that the judgments of the two courts below cannot be faulted in any manner. There is no doubt that u/s 100 of the CPC, the High Court can set aside the judgments against which the Second Appeal has been preferred even though concurrent finding of facts have been recorded by the courts below in certain circumstances. It is true that the rule that concurrent findings of facts recorded by the trial judge as well as the first appellate court should not be disturbed. However, this is not an inviolable rule and when it is shown that the findings recorded are perverse, the High Court can interfere while deciding a Second Appeal. In the present case, in my opinion, both the courts below have on a proper appreciation of the evidence before them concluded that land bearing Gat Nos. 237 and 239 were a part of the joint family property of the plaintiffs and defendant No. 1 and that defendant No. 1 was only managing the properties. There are no exceptional circumstances pointed out by the learned Advocate for defendant No. 1 to depart from the aforesaid rule that concurrent findings should not be disturbed in a Second Appeal. The findings recorded are not perverse and, therefore, in my opinion, the Second Appeal deserves to be dismissed.

13. Accordingly, the Second Appeal is dismissed with costs.