
(2012) 04 BOM CK 0128
In the Bombay High Court
Case No : Second Appeal no. 752 of 2011

Sonabai Ramchandra Khot and others	APPELLANT
Vs	
Bhimrao Krishna Khot and others	RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 6 ALLMR 395 : (2012) 4 MhLj 548

Hon'ble Judges : R. M. Savant, J

Bench : Single Bench

Advocate : Pratap Patil with Mr. Manoj Kadam, for the Appellant; Umesh Mankapure with Shri Umesh Wable, for the Respondent

Final Decision : Allowed

Judgement

R. M. Savant, J.—Admit, with the consent of the parties, taken up for hearing forthwith. The above Second Appeal arises out of the judgment and order dated 10 the August, 2011 passed by the learned District Judge-1, Islampur by which the Appeal filed by the Respondents herein came to be partly allowed and resultantly, the decree passed by the trial Court in Regular Civil Suit no. 214 of 2001 came to be set aside and the suit, in turn, came to be decreed, whereby the Respondents are perpetually restrained from obstructing Plaintiffs' possession of suit land-IB out of CTS 499. However, the claim of the Plaintiffs for a declaration that they are the exclusive owners of the suit property, was rejected.

2. The facts necessary to be cited for adjudication of the above Second Appeal, in brief, can be stated thus:

i. The suit property described as IB out of CTS no. 499 is the open space situated in front of CTS no. 498, 500, 501 towards northern side. The Plaintiffs filed the suit in question for perpetual injunction restraining the Defendants from obstructing their right over the suit property. It was the case of the Plaintiffs that they are the owners of CTS no. 498 and 501 respectively and that their houses

are facing towards the north. It was the case of the Plaintiffs that the open land i.e. the suit properties in front of their houses, is their courtyard since beginning and they are using the open land to approach the road situated towards the northern side. It was their case that the said open land is of their ownership. It was further their case that they had constructed steps to reach their house from the suit property by raising its height and have also dug pits in the suit land. It was their case that they are using suit land since the last 50-60 years continuously as owners for various purposes. The cause for filing the suit was that in the year 1986 when city survey in the village Masuchiwadi was carried out, the said CTS no. 499 was entered in the name of the Defendants behind the back of the Plaintiffs and without any notice to them. It was their case that though the Defendants have no concern with the land-CTS no. 499 they filed an application before the T.I.L.R. for fixing the boundaries of the said CTS no. 499 and since the Defendants claim ownership of the CTS no. 499 that the Plaintiffs were constrained to file the suit in question. The Defendants, in their written statement, denied the right, interest and possession of the Plaintiffs over the suit land. It was their case that the suit properly has not been properly described and in fact is not in existence. It was their case that the Plaintiffs had some other way for ingress and egress and therefore there was no cause of action for the Plaintiffs to file the suit in question. The easementary right of the Plaintiffs over the CTS no. 499 was denied by the Defendants. It was their case that said CTS 499 was jointly owned by them.

ii. The parties went to trial and adduced evidence in support of their respective cases. Amongst the issues framed by the trial Court was the issue as regards whether the Plaintiffs prove that they are the exclusive owners and in possession of the suit property, as also whether the Defendants prove that they are the exclusive owners and in possession of the suit property. Insofar as the issue of ownership of the Plaintiffs is concerned, it was answered in the negative and the ownership of the Defendants is answered in the affirmative. The trial Court on the basis of the material on record reached a finding that the Plaintiffs could not prove their ownership to the property and also recorded a finding that the Plaintiffs were not entitled to the injunction sought and accordingly dismissed the suit by judgment and order dated 31st January, 2005. It is required to be noted that the Plaintiffs gave up their plea of there being a easementary right vested in them qua the said CTS 499 and therefore the issue of whether the Plaintiffs had any easementary right was not required to be adjudicated upon by the trial Court.

iii. The unsuccessful Plaintiffs, aggrieved by the decree of dismissal passed by the trial Court dated 31st May, 2005, have filed the Appeal being Regular Civil Appeal no. 24 of 2005. The lower Appellate Court, on a re-appreciation of the evidence on record partly decreed the suit thereby Defendants were perpetually restrained from obstructing the Plaintiffs' possession and use of suit land IB out of CTS no. 499. As indicated above, the declaration sought by the Plaintiffs of they being the exclusive owners was rejected. The lower Appellate Court, as can be seen, relied upon the proceedings which were initiated by the Plaintiffs after the Defendants

had got their names entered in the City Survey record in respect of CTS no. 499; the Plaintiff no. 1 had filed an Appeal before the Superintendent of Land Record, Sangli and the said Appeal was allowed during the pendency of the suit before the trial Court. The Superintendent of Land Record had held in the said enquiry that on going through the consolidation map, it is seen that the holders of CTS Nos. 496, 497, 498 500 and 501 are required to use CTS no. 499 to reach the road situated towards the northern side. The Superintendent of Land Records held that the said holders have got their right in CTS no. 499 and accordingly allowed the Appeal. The decision of the Enquiry Officer dated 24th July, 1986 was set aside and the names of the Plaintiffs were also directed to be entered in the revenue record. However, the Superintendent of Land Records clarified that the said decision would be subject to the decision in the pending Regular Civil Suit no. 214 of 2001 out of which the present proceedings have arisen.

iv. The lower Appellate Court, relying upon the orders passed by the Superintendent of Land Records, held that the said record suggests that the Plaintiffs are the joint owners of CTS 499 alongwith the Defendants. The lower Appellate Court, on consideration of the other record, relating to the enquiry register in respect of CTS Nos. 504, 498, 501 vide at Exhs. 35, 36 and 37 held that the said evidence suggests that the CTS no. 499 is jointly used by the holders of CTS Nos. 496, 497, 498, 500 and 501 for reaching the road towards the northern side. The lower Appellate Court also relied upon the report of the Court Commissioner who has also corroborated the case of the Plaintiffs of their right and interest in respect of CTS no. 499, more particularly the suit property IB. The lower Appellate Court thereafter held that the Plaintiffs are the joint owners of CTS no. 499 alongwith the Defendants, however, they were not entitled to the relief of declaration of the exclusive ownership over the suit property IB and in view of the fact that the Defendants intended to erect compound wall, the lower Appellate Court held that the Plaintiffs were entitled to the relief of injunction against the Defendants from obstructing their right to use the common land in front of their house i.e. the suit land IB to approach the northern side road. The lower Appellate Court, as stated herein above, has by its judgment and order dated 10th August, 2011 partly decreed the suit.

3. The substantial questions of law therefore which arise for consideration are-

i. Whether in the absence of the origin of title of Respondent Nos. 1 to 5 to the suit property IB, the Appellate Court erred in holding that the Respondents 1 to 5 are joint owners of the suit property IB alongwith the other co-owners ?

ii. Whether the Appellate Court committed error by issuing a perpetual injunction, thereby restraining the Appellants from obstructing the possession and use of the suit property IB by the Respondent no. 1 to 5 when there is no evidence of any vestige of title in the Respondent Nos. 1 to 5 ?

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing on behalf of the Appellants would contend that

the Plaintiffs have not produced any evidence to show their title to the property in question. The learned counsel would contend that the documents which have been relied upon by the lower Appellate Court for holding that the Plaintiffs are the joint owners are the orders passed by the revenue authorities and the since it is trite that the such orders only raise a presumption and cannot confer title, the lower Appellate Court had erred in coming to the conclusion that the Plaintiffs are the joint owners of the suit property alongwith the Defendants. The learned counsel would contend that at the highest what the Plaintiffs are entitled to is an injunction in respect of the suit property IB to the effect that they should not be dispossessed without due process of law.

6. Per contra it is sought to be contended by the learned counsel Shri Mankapure, appearing for the Respondents that the joint ownership of the Plaintiffs is proved from the documents which are in the nature of the revenue record. However the said submission is advanced by the learned counsel without any deal of conviction. The learned counsel would contend that the injunctive relief which has been granted in favour of the Plaintiffs is on the basis of the revenue record, which calls for no interference at the hands of this Court in the above Second Appeal.

7. Having heard the learned counsel for the parties, I have considered the rival contentions of the parties.

Insofar as the finding of joint ownership which is recorded in paragraph 10 of the judgment of the lower Appellate Court, the said finding, it seems, has been recorded without there being any title document produced by Plaintiffs in respect of the suit property IB. The learned counsel appearing for the Respondents herein i.e. the original Plaintiffs, Shri Mankapure fairly conceded to the said position that in the absence of any title document, what is on record are only the orders passed by the revenue authorities relating to the entries made in the city survey record. Insofar as the said entries are concerned, though an entry was made in the name of the Plaintiffs in respect of the said CTS no. 499, this was on the basis of user of the said CTS no. 499. The documents in question which were before the Court, at the highest, can be said to disclose an easementary right in favour of the holders of the adjoining CTS Nos. 498, 500 501 to CTS no. 499. The said entries directed to be recorded in the name of the Plaintiffs by the Superintendent of Land Record cannot be said to be a document of title in favour of the Plaintiffs. It is trite that the entries in the revenue record have only presumptive value and do not confer any right or title qua the property in respect of which they are made. In my view therefore, the lower Appellate Court has erred in holding a finding that the Plaintiffs are the joint owners, without there being any title document produced by the Plaintiffs on record, in respect of the said suit property IB.

Insofar as the aspect of injunction qua the suit property IB is concerned, though the Plaintiffs gave up their claim based on the easementary right, the lower Appellate Court, on the basis of revenue record as also on the basis that there

was material on record to indicate that the Defendants were in the process of obstructing the use of the suit property IB by the Plaintiffs, has granted injunction to the extent mentioned in the operative part of the said order. In the light of the answer to the substantial questions of law as recorded herein above, wherein this Court has come to the conclusion that the declaration of joint ownership could not be granted to the Plaintiffs, the Plaintiffs can only said to be in possession of the property in question without any vestige of title. In my view therefore, it would be appropriate to modify the decree of injunction that has been passed by restraining the Defendants from obstructing the Plaintiffs' possession and use of the suit land IB out of CTS no. 499 except by due process of law. The questions of law therefore to stand answered accordingly. The above Second Appeal is allowed to the aforesaid extent with the parties left to bear their own costs.