
(2022) 06 BOM CK 0073

In the Bombay High Court

Case No : Second Appeal No. 621 Of 2022 (Filing), Civil Application No. 623 Of 2022 (Filing), Miscellaneous Civil Application No. 622 Of 2022 (Filing)

Vasudha Vasant Dabholkar

APPELLANT

Vs

Sudesh Govekar And 8 Ors

RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 97, Order 21 Rule 97(2)
Prohibition Of Benami Property Transactions Act, 1988 — Section 4(2)

Citation : (2022) 06 BOM CK 0073

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Pranav Desai, S. D. Lotlikar, Ketaki Pednekar

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. Obstructionist has preferred this Second Appeal against the Judgment and Order dated 05.03.2022 passed by the learned District Court by which, order and decree dated 14.12.2021, passed by the Court of Civil Judge, Junior Division 'F' Court at Mapusa, in the proceedings under Order 21 Rule 97 of the Code of Civil procedure was confirmed.

2. Brief facts of the case are as under :

On 18.12.2006, respondent nos. 1 to 5, (plaintiffs) instituted Regular Civil Suit No. 226/2006/E, simpliciter for injunction against the respondent nos. 6, 7 8 and 9 (defendants), without making appellant a party thereto, although her mother, late Leelavati was impleaded therein as defendant no.3. Furthermore, that on the death of her mother, she and her three sisters were not impleaded as parties. Therefore, neither the decree passed by the Trial Court, as sought to be executed nor the judgments passed by the District Court in Appeal or the High Court in Second Appeal or even the Supreme Court is binding on her as she was not party

to the said proceedings. Thus, she moved an application under order 21 Rule 97 of the CPC.

3. Late Vassudev Govekar, father of plaintiff nos. 1 and 3, and defendant no.1, are brothers and the name of their father is late Jaganath Govekar. That, there exists a property known as "Deuladi" bearing survey no. 251/2 situated at Chinvar of Village Anjuna, Bardez Taluka, having an area 1000 square metre, which is a suit property. That property bearing Talhao number 168 of Comunidade of Anjuna was acquired by father of plaintiffs' 1 and 3, late Shri Vassudev Govekar from Comunidade of Anjuna under no. 131/1963 on 24.02.1970, as a permanent grant for the construction of the house. That towards the eastern side of the suit property, there exists a property bearing survey no. 251/4, wherein house no. 1653 of Jaganath Govekar was located. The said Jaganath Govekar is the grandfather of the plaintiff nos. 1 and 3. That late Vassudev Govekar had constructed an incomplete structure in the suit property. The said incomplete structure has been referred to as the 'suit house'. After the death of Vassudev Govekar, plaintiffs filed an Inventory Proceedings before the learned Civil Judge and the suit property with the suit house was taken on auction by them. Plaintiffs' case is that the defendants in their absence, demolished the suit house and in its place, started constructing a structure having 18 metres length and 12.20 metres width comprising of 419 square metres. In this backdrop, the plaintiffs filed the suit and prayed that defendant be restrained by permanent injunction as well as sought a mandatory injunction.

4. The Trial Court dismissed the suit on 30.03.2012. Appellate Court vide Judgment dated 24.12.2012, decreed the suit. In the Second Appeal, decree of the first Appellate Court was confirmed. Where-after, vide order dated 14.02.2016, Hon'ble Supreme Court confirmed the judgment in the Second Appeal.

5. Pending suit, mother of appellant passed away on 30.03.2021. It appears her legal representatives were not brought on record since the other defendants were adequately representing the estate.

6. Pending Civil Appeal, decree holders instituted execution application. This Court vide order dated 24.10.2021, directed the executing Court to conclude the execution proceedings within three months.

7. On 17.11.2021, Appellants moved an application under Order 21 Rule 97 of the Civil Procedure Code, i.e. nearly five years after the decree was confirmed by the Apex Court.

8. Application under Order 21 Rule 97 read with Rule 101 of the CPC was dismissed on 14.12.2021. Regular Civil Appeal against that order was also dismissed on 05.03.2022. Hence this Second Appeal.

9. Upon appreciating the evidence, the first Appellate Court and the High Court held that the plaintiffs are owners of the suit property which they had inherited

from Vassudev Govekar, father of plaintiff nos. 1 and 3. In order to prove the ownership, not only the grant from Comunidade of Anjuna under 131/1963 was produced on record, but plaintiffs had also filed evidence of Inventory Proceedings initiated upon death of Vassudev Govekar, which described as suit property. In view of the evidence, finding rendered by the first Appellate Court that Vassudev Govekar was owner of the property was confirmed in Second Appeal and further reconfirmed by the Supreme Court in the Civil Appeal.

10. It could be seen from the judgments in the Second Appeal and Civil Appeal that, besides disputing and questioning title of Vassudev Govekar, defence was sought to be raised by the defendants, that although permanent grant was in the name of Vassudev Govekar, however, it was father of the defendant no.1, Jaganath Govekar, had applied for grant in the name of late Vassudev. However, this defence was not allowed in view of sub-section (2) of Section 4 of the Benami Transaction Act. In Civil Appeal, Hon'ble Supreme Court dealt with the said argument and held in paragraph no. 18 as hereunder :

"18. In this context, the question of benami ownership also surfaced. There is no dispute that in the revenue records property stood in the name of Vassudev Govekar and not Jagannath Govekar. The first appellate court rightly held that the plea with regard to the real owner of the property being Jagannath Govekar could not be gone into as it was barred by the provisions of Section 4(2) of the Benami Act. Though we do not find any merit in the arguments of the appellants that the Benami Act is not applicable, in any case there is hardly any material produced by the defendants to support that real owner was Jagannath Govekar. This claim is made only on the ground that it is Jagannath Govekar who had got the suit property acquired in the name of his son Vassudev Govekar. That by itself would not make Jagannath Govekar as the owner of the suit property."

11. Thus, three Courts having answered the issue of ownership of the suit property in favour of plaintiffs-decree holders, appellant-obstructionist, daughter of defendant no.3 (late Leelavati), in my view, could not have claimed right in the suit property through her mother, since Vishram Govekar, defendant no. 1, was representing appellants' interest in the suit proceedings. In context of these facts, the Appellate Court has correctly held that when estate is fully represented by the heirs who are on record, then, absent heir are bound by the result. Law is that, a person is bound by the decree, includes a person claiming through judgment-debtor. Therefore the decree passed in the suit instituted by the plaintiffs, binds the appellants.

12. Insofar as adjudication of rights in the proceedings under Order 21 Rule 97 are concerned, the Apex Court in the case of Silver Line Forum Pvt. Ltd. vs. Rajiv Trust & anr. (1998) 3 SCC 723 , has held in paragraph 14 that, the adjudication mentioned in Order 21 Rule 97(2) of the Code need not necessarily involve a detailed inquiry or collection of evidence. Therefore, contention of the appellant that the trial Court has committed a gross irregularity in adjudicating the rights without detailed enquiry and without permitting the appellant to lead the

evidence, is rejected. Even otherwise, evidence on record shows that the appellant was aware of the suit proceedings. Yet, Appellant did not take steps to protect her interest in the suit property since 2006.

13. For the reasons stated above, the Civil Application No. 2 of 2022, seeking stay to further proceedings in Execution Application no. 5/2014/E pending before the Civil Judge, Junior Division, 'E' Court, is rejected.