

SUPREME COURT OF INDIA

Krushnabai B. Ulwekar

Vs.

Gopal Shankar Ulwekar

C.A.No.5286-87 of 2008

(S.B.Sinha and Cyriac Joseph JJ.)

27.08.2008

ORDER

1. Leave granted.

2. These appeals are directed against the judgment and decree dated 27.6.2007 passed by a learned Single Judge of the High Court of Judicature at Bombay in First Appeal Nos. 839 and 840 of 2005 dismissing the appeals preferred by the appellants herein from a judgment and decree dated 21.3.2005 passed by the Bombay City Civil Court disposing of Suit Nos. 7119/77 and 5708/84.

3. With a view to appreciate the rival contentions of parties to which we shall refer to a little later, we may at the outset study the genealogical table depicting the relationship between the parties which is as under:

“DHARMA

_____ | | | | |
Bhiku Sowar Bama Padu Aditwar | | Bhiwas Shankar | | (i)Krushubai(ii)Ramshdev(iii)
Om Prakash | (iv) Lasmikant (v) rekha (vi) Kusum | (Petitioners) |
_____ | | | Gopal Manohar Kamlabai (Respondents) Indisputably,
the partition took place prior to 1930. However, the same was an oral one as no
document in support thereof has been brought on record.

Sowar was allegedly allotted 123 Guntas of land bearing Survey No. 24 Hissa No.1, Survey No.15 Hissa No.4 and Survey No. 11/14 admeasuring 1 Acre 26 Guntas, 1 Acre 10 3/4 Guntas and 0 Acre 6 1/2 Guntas respectively.

Aditwar is said to have been allotted 100 Guntas of land bearing Survey No. 24 Hissa No.2, Survey No.24 Hissa No.3,Survey No. 11/10 and Survey No. 11/2/2/ admeasuring 0 Acre 20 Guntas, 1 Acre 1 Gunta, 0 Acre 29 Guntas and 0 Acre 8 3/4 Guntas respectively.”

4. We may, however, place on record that the said assertion on the part of the appellants herein is denied and disputed. According to the appellants, Hissa No.4 in Survey No.15 was furthermore sub-divided into 4 Hissas and the respondents were shown to be in possession of Survey No. 15/4B admeasuring 31 1/4 Guntas.

5. Furthermore, contention of the appellants is that in the year 1964 the said sub-divisions were cancelled by the revenue authorities. It is also contended that upon coming into force of the provisions of the Urban Ceiling and (Regulation) Act, 1976, the appellants had shown in their return the entire Survey No.15 Hissa No.4 as in their possession. However, it is submitted that in April, 1977, entry in Survey No. 15 was changed.

6. An appeal filed thereagainst by the appellants was dismissed.

7. However, a Second Revision filed by the appellants is said to have been allowed. A writ petition filed by the respondents was not entertained on the premise that an alternative remedy by a civil suit is available to the respondents.

8. It is, however, not disputed that whereas the appellants before us, in view of the entry made in Survey No.15 in April, 1977, filed a suit on or about 26.8.1977 which was marked as Special Civil Suit No. 7119 of 1977, the respondents in view of the observations made in the aforementioned writ petition filed suit No. 5078 of 1984 in the Bombay City Civil Court. Both the suits were heard together. The parties adduced their oral and documentary evidence.

9. Whereas the suit filed by the appellants was dismissed, the suit filed by the respondents was decreed. Two appeals were preferred thereagainst by the appellants. By reason of the impugned judgment, the said appeals have been dismissed.

10. Mr.Gaurav Agarwal, learned counsel appearing on behalf of the appellants would submit that the High Court has failed to consider the contentions of the parties in their proper perspective.

11. Mr. Jain, learned counsel appearing for the respondents, on the other hand, would support the impugned judgment.

12. We may at this juncture place on record that applications have been filed before us on behalf of the respondents herein for permission to file additional documents on record which were not part of the proceedings before the Courts below. The said documents have been marked as Annexure R/22 and Annexure R/23. For the reasons stated hereinafter, we are not inclined to entertain the said applications at this stage.

13. From a perusal of the impugned judgment it appears that the High Court proceeded on the basis that partition effected between the parties prior to 1930 should be re-opened as the shares between both the branches were not equal.

14. In our opinion the questions which were required to be posed and answered by the High Court were; (1) whether by reason of the said partition allotment of the joint family property was made as contended by the respective parties; (2) whether Hissa No.4 in Survey No. 15 or any part thereof was allotted either to Bhiwa or Shankar; (3) whether the land in suit was correctly recorded in the Records of Rights and who was in possession thereof.

15. In view of the reliefs claimed by the parties in their respective suits, in our opinion, there was no occasion for the High Court to adopt an approach to re-open the partition so as to cause equitable distribution of the entire joint family property between the parties.

16. We, therefore, are of the opinion that as the approach of the High Court was not correct, interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the entire matter afresh confining itself to the issues framed in the suit. If, however, respondents intend to bring on record some additional documents, they may file an appropriate application under Order XLI Rule 27 of the Code of Civil Procedure before the High Court, which may be considered on its own merits.

17. It is accepted at the Bar that the respondents are in possession of the lands in suit. If, that be so, till any further order is passed by the High Court, the respondents shall continue to remain in possession.

18. We may, furthermore, notice that applications for directions have been filed by the respondents being I.A.Nos.15-16/2008. As we have not considered any of the documents filed before us by the parties, we need not pass any order on these applications.

19. With the aforementioned observations, the appeals are allowed.

20. However, it is made clear that all contentions of the parties shall remain open.