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Court : Mumbai Nagpur

Decided On : Apr-16-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 53 of 2007

Appellant : Kanhu

Respondent : Badalshaha and Others

Judgement :

Oral Judgment:

1. This second appeal is preferred against judgment and order dated 29.11.2006, passed by the learned Principal District Judge, Gadchiroli, in Regular Civil Appeal No.14 of 2006, whereby the first appellate Court was pleased to allow the appeal partly and decree the suit for possession. The first appeal arose from judgment and order dated 17.12.2005, passed by the learned Joint Civil Judge Junior Division, Gadchiroli, in Regular Suit No.87 of 1997, whereby the suit was dismissed and mesneprofits were disallowed.

2. This second appeal was admitted on 27.2.2007 on the following substantial question of law, thus:

œWhether the appellate Court was justified in reversing the finding recorded by the trial Court without recording reasons therefor and without considering the

evidence considered by the trial Court while recording the findings??

The answer is the negative for the following reasons:-

3. The trial Court, it appears that, had decided the suit for possession and mesneprofits preferred by plaintiffs against the appellant/defendant. The case of plaintiffs was based upon the ownership of the suit land bearing Survey No.124, area admeasuring 0.30 hectare, situated at Mouja Jawalwahi, District Gadchiroli.

4. The case of plaintiffs about the ownership as well as the possession of the suit land was negated by the trial Court on the ground that it was not supported by any documentary evidence as to title of plaintiffs. The burden to prove the title was upon plaintiffs and they had failed to discharge it to establish that they were owners of the suit property. The contention of plaintiffs was that merely on the basis of the entry in 7/12 extract, plaintiffs cannot prove their ownership over the suit land. They must adduce reasonable and acceptable evidence to establish the ownership as well as the possession of the suit property. The trial Court, who recorded the evidence, found that except entry in 7/12 extract, no other evidence was produced by the plaintiffs to establish the ownership, possession as also the alleged case of plaintiffs that they were dispossessed by the appellant/defendant by making encroachment over the suit land. On the other hand, the specific finding was recorded by the trial Court that the appellant/defendant proved his ownership and possession in respect of the suit land. That being so, the suit was dismissed.

5. According to Shri M.P.Khajanchi, learned counsel appearing for the appellant/defendant stressed upon the specific finding as to ownership and possession of the appellant/defendant recorded by the trial Court and, submitted that there was no justification at all for the first appellate Court to interfere with the well reasoned judgment and order passed by the trial Court.

6. According to the first appellate Court, there was entry in 7/12 extract in the name of plaintiffs and since the appellant/defendant admitted that entry was made in revenue records in the name of plaintiffs, the finding recorded by the trial Court was reversed by the first appellate Court. The reasons recorded by the first appellate Court appear far from the satisfactory. Considering the legal position in

this regard that mere entry in the revenue records, cannot give rise to interference as to title though such entry may have a corroborative value for proving the title. The plaintiffs seeking to prove their title, must adduce satisfactory evidence apart from mere entry in the revenue records to prove title in favour of plaintiffs because such entry by itself cannot be the sole basis to prove title.

7. Shri Khanjanchi, learned counsel, has made reference to the ruling in the case of **BalwantSingh and another etc. ..vs.. Daulat Singh (dead) by LRs and others**, reported at **AIR 1997 SC 2719** and invited my attention to paragraph No.27 of the ruling cited (supra) in order to submit that the mutation by itself cannot be construed as conveying title in favour of plaintiffs.

8. The proposition made that mere mutation entry in the revenue records would not convey a title in favour of the person whose name has been entered into in the revenue records cannot be disputed in the present case. The specific finding was recorded by the trial Court in favour of the appellant/defendant as to defendant's ownership and title of the suit property. That being so, merely on the ground that the appellant/defendant admitted that an entry was made in the revenue records in favour of plaintiffs, cannot be considered as sole basis to dislodge the finding of fact recorded by the trial Court in respect of the ownership title of the appellant/defendant over the suit property. The disputed question of title and possession is always within domain of competent Civil Court to adjudicate mutation proceeding before the revenue authority does not decide questions of title to immovable property like a Civil Court which alone has competent jurisdiction to decide questions of title to the immovable property. The revenue authority by conducting a mutation proceeding cannot confer title to the immovable property. The object of mutation proceeding is to ensure payment of revenues to the State exchequer by an occupant of the immovable property for his actual physical occupation or claim as to title/status.

9. In view of above, the impugned judgment and order, passed by the first appellate Court, is unsustainable in law and is required to be set aside and the judgment and order passed by the trial Court is required to be restored.

10. In the result, Second Appeal No.53 of 2007 is hereby allowed. The impugned judgment and order dated 29.11.2006, passed by the learned Principal District Judge, Gadchiroli, in Regular Civil Appeal No.14 of 2006, is set aside and judgment and order dated 17.12.2005, passed by the learned Joint Civil Judge Junior Division, Gadchiroli, in Regular Suit No.87 of 1997, is restored.

Second Appeal No.53 of 2007 is hereby allowed and disposed of accordingly with costs.

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