
ORDER BELOW EXH.4 in R.C.A. NO.48/2024

1. The appellants have preferred the captioned appeal against the Judgment and Order dated 11.11.2024 passed in the Regular Civil Suit No.04/2024 by the Ld. Trial Court allowing the suit of the plaintiff. The appellant has preferred present application to stay the impugned judgment and decree dated 11.11.2024 passed by the Ld. Trial Court in Regular Civil Suit No.04/2024.
2. Ld. Adv. for the appellant has further submitted that, the litigation with respect to present subject matter is also pending before the Revenue Authority. Moreover, respondent has malafidely taken his signature on the compromise in Regular Civil Suit No.150/1998. Ld. Adv. for the appellant has further contended that the hearing and disposal of this Appeal is likely to take time. Under the circumstances, it is submitted to stay the impugned judgment and decree passed in Regular Civil Suit No.04/2024 till the disposal of this appeal.
3. Respondent has been served with the notice and he appeared through Ld. Adv. Mr. S. V. Malek and filed written statement vide Exh.11 and also submitted written arguments vide Exh.28 and thereby denied the facts stated in the the application Exh.4. Ld. Adv. for the respondent has further contended that earlier present appellant has preferred Regular Civil Suit No.150/1998,

in which a compromise was taken place on 19.02.1999 and the possession of the suit land was handed over to present respondent. The appellant has never challenged the judgment and decree passed in Regular Civil Suit No.150/1998. Thus, the present appellant has handed over the possession of the suit land in favour of the present respondent, hence there is no prima facie case in favour of the present appellant, the time of 24 years already over since the date of judgment and decree passed in Regular Civil Suit No.150/1998 and therefore the application preferred by the appellant to stay the order passed by Ld. Trial Court is requires to be rejected. Ld. Adv. for the respondent has also relied upon the judgments of the Hon'ble Superior Courts, which are reproduced as under:

- i. GLH 2010(1) PG.112 Head Note (A)(B)(C).
- ii. GLH 2002 (1) PG.304 Head Note (A).
- iii. GLH 2002 (2) (U.J.) PG.7.
- iv. AIR 1981 Supreme Court PG.707.
- v. GLH 2005(1) PG. 735.
- vi. GLH 2019 (3) PG. 256 Head Note (A).

Ld. Adv. for the respondent has further contended that the present appellant has not challenged the Judgment and decree passed in Regular Civil Suit No.150/1998. A compromise was took place between the parties and present appellant has received the amount of Rs.5001/- and he (present appellant) has handed over the possession of the suit land to the present

respondent. Thereafter, Ld. Trial Court has passed decree in Regular Civil Suit No.150/1998 which is produced vide Exh.23 before Ld. Trial Court in Regular Civil Suit No.04/2024. Ld. Adv. for the respondent has further contended that the appellant has not mentioned in this application that where Ld. Trial Court has committed error in passing the order. The present appellants has relied upon the provision of S.70(A)(B) of the Bombay Land Revenue Code, but when the present appellant has earlier preferred Regular Civil Suit No.150/1998, such provision was not in existence, and in this regard Ld. Adv. for the respondent has also relied upon the Judgments of the Hon'ble Superior Courts, which are as follows:

- i. GLH 1983 PG No.281.
- ii. GLH 2003 PG No.30 Head Note (A)(B).
- iii. GLH 1985 PG No.578 Head Note (A)(B).
- iv. GLR 1992 PG No.399 Head Note (A)(B).
- v. AIR 1999 Supreme Court PG No.1441 Head Note (A)(B)(C)(D)(E).

Thus, the present respondent had preferred Regular Civil Suit No.04/2024, which is related to the Title of the suit property and considering the prayer of the Regular Civil Suit No.04/2024, present respondent has not prayed anything related to the revenue entry. Ld. Trial Court has allowed the suit of the present respondent and declared that plaintiff (present respondent) possesses the suit land and defendant (present appellant) does not have any right, title or interest over it. The

defendant (present appellant) is permanently restrained from interfering plaintiff's (present appellant's) cultivation right over suit land or from disturbing his peaceful possession.

The present appellant has waived his right and handed over the possession of the suit property to the present respondent, even earlier the suit property run in the joint name, but the present appellant has tried to create false right over the suit property by removing the names of the joint owners and also trying to snatch the possession of the suit property anyhow and therefore present respondent has preferred Regular Civil Suit No.04/2024, and considering the provision of law and documentary evidence on record, Ld. Trial Court has rightly allowed the suit of the present respondent.

Before deciding the stay application, it ought to consider that there may be prima facie case in favour of the appellant or not? Respondent has produced copy of compromise and decree drawn in Regular Civil Suit No.150/1998, which has not been challenged by the present appellant till today. Therefore this application requires to be rejected with costs.

4. Ld. Adv. for the appellants has orally argued out and reiterated the same set of facts as stated in the application. Lastly he has contended that there is prima facie case in favour of the appellants and there are strong chances that the appellants may succeed and therefore he has prayed to stay the implementation

of judgment and award passed by the Ld. Trial Court dated 11.11.2024 in Regular Civil Suit No.04/2024.

5. Ld. Adv. Mr. S. V. Malek on behalf of the respondent has orally argued out and stated that Ld. Trial Court has after completion of complete Trial, Ld. Trial Court has allowed the suit of the present respondent and declared that plaintiff (present respondent) possesses the suit land and defendant (present appellant) does not have any right, title or interest over it. The defendant (present appellant) is permanently restrained from interfering plaintiff's (present appellant's) cultivation right over suit land or from disturbing his peaceful possession. Lastly he has prayed to reject this application with costs.
6. Having bestowed thoughtful consideration to the facts of the matter and record of Ld. Trial Court, and the ratio laid down by the Hon'ble Superior Courts. It is undisputed fact that the suit land was jointly owned as well as possessed by both the parties, who happened to be real brothers, and their names were mutated in the revenue record of the suit land. Earlier present appellant has preferred Regular Civil Suit No.150/1998, and during the pendency of the suit, a settlement was carried out and the present appellant has relinquished his right over the suit property and handed over the possession of the suit land in favour of the present respondent, and on that basis Ld. Trial Court has disposed of the suit by drawing decree on 26.02.1999 and since then after passing of more than 25 years, the present

appellant has not challenged the decree passed in Regular Civil Suit No.150/1998, hence it attains finality as per legal norms. Moreover, Ld. Adv. for the respondent has drawn attention towards the provision of S.73AB of the Bombay Land Revenue Code, hence looking to the provision of S.73AB, which provides that if such occupant is a tribal, his interest in the occupancy shall not be sold to a non-tribal without previous sanction of the Collector. But, in the case on hand, the parties are happened to be real brothers, hence previous sanction of Collector is not required in case of settlement between tribal to tribal i.e. family settlement. Moreover, the appellant has not pleaded in any litigation for the possession of the suit land during the period of more than 25 years and remained silent. Moreover, the present respondent has preferred Temporary Injunction Application Exh.5, wherein Ld. Trial Court had granted injunction in favour of present respondent and restrained the present appellant from disturbing and/or interfering present respondent's right of cultivating the suit land until final outcome of the suit. Thereafter, full fledged trial of the case and marshalling the evidence on record, Ld. Trial Court has come to the conclusion and allowed the suit in favour of the present respondent and present appellant has been permanently restrained from interfering with respondent's cultivation right over the suit land or from disturbing his peaceful possession. Thus, since 26.02.1999, the present appellant has not carried out any procedure or challenged the decree passed in Regular Civil Suit

No.150/1998, and the present respondent is having possession of the suit land since the date of judgment and decree delivered in Regular Civil Suit No.150/1998 i.e. since more than 25 years, hence this Court cannot protect such person who has not remained conscious for more than 25 years for claiming his right over the suit property and even-otherwise, it is not justified in legal terms. Therefore, inevitable conclusion will follow that the present application deserves to be disallowed. Hence, following order is passed in the interest of larger justice.

: O R D E R :

- i. The present application is hereby disallowed.
- ii. The cost of this application to be cause in the appeal.

Pronounced in the open Court today on 04th day of April, 2025.

Dt.04/04/2025
Place : Dahod

(Harshad Shamrao Khutwad)
3rd Additional District Judge,
Dahod - GJ 00724.

T. N. Patel