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Duration : Y M D
02 08 21**IN THE COURT OF CIVIL JUDGE , JUNIOR DIVISION,****MAHAD, AT MAHAD**

(Presided over by J. T. Koregaonkar)

Regular Civil Suit no. 75 of 2014**Exhibit no. /A**

- 1) Prashant Sudhakar Khatu)
Age: 44 years Occupation: Service)
2) Sugandha Sudhakar Khatu) Plaintiffs
Age: 68 years Occupation: Housewife)
Both r/o: Mumbai)

versus

- 1) Sarpanch, Group Grampanchayat,)
Walan Khurd Taluka : Mahad, Dist. : Raigad) Defendants
2) Gramsevak, Group Grampanchayat,)
Walan Khurd Taluka : Mahad, Dist. : Raigad)

Suit for declaration and mandatory injunction**Appearances :**

Mr. K. M. Pawar Advocate for the plaintiffs
Mr. B.P. Salunke Advocate for the defendants

JUDGMENT

(Delivered on 22.08.2017)

This is a suit for declaration and mandatory injunction.

2) The plaintiff averred that House no. 117 admeasuring 26 feet by 28 feet situated at Walan Khurd, Taluka : Mahad, District : Raigad (hereinafter referred to as the ' suit property ') was owned by the grandfather of the plaintiff no. 1 namely Sadashiv Balkrishna Khatu. He died on 09.09.1985. The suit property was looked after and maintained by him during his lifetime and thereafter by his wife Subhadrabai and son Sudhakar. Subhadrabai and Sudhakar died on 30.06.1999 and 31.12.1994 respectively. After the death of the father of the plaintiff no. 1 Sudhakar the suit property was maintained and possessed by the plaintiffs. The suit property is an old house with sand walls and wooden ceiling. Hence it is necessary to repair it.

3) In 1990 the father of the plaintiff no. 1 Sudhakar replaced the wooden ceiling with a new one. The cousin of Sudhakar namely Sharad Vishnu Khatu was elected as Member of Legislative Assembly. He never maintained the suit property. Despite the possession of the suit property with the plaintiffs after the demise of the grandfather and father of the plaintiff no. 1, Sharad Vishnu Khatu fraudulently got his name mutated in the assessment extract of the suit property. When the plaintiffs came to know about the same they moved an application to the defendants to delete the name of Sharad Vishnu Khatu and his wife Geeta Sharad Khatu from the house tax receipts of the suit property. The plaintiffs also sent reminders to the defendants in that regard. But the defendant did not pay any heed.

4) The plaintiffs demanded assessment extracts of the suit property of the year 1975,1985,1990 and 1992 from the defendants . They were intimated that there were not available. Hence the plaintiffs approached the competent authorities under the Right to Information Act.

5) The name of Sharad Vishnu Khatu is not mutated by means of any legal document. The plaintiff had applied on 06.09.2014 to the defendant for deletion of the name of Sharad Vishnu Khatu and Geeta Sharad Khatu from the assessment extract, issuance of no objection certificate regarding taking of an electric connection in the suit property, for repairs of the suit property and erection of a water closet in an open space besides the suit property. The defendant denied the same on 17.10.2014. Hence the suit.

6) The defendant filed his written statement (Exh. 15). The defendant contended that the suit property was in the name of Sadashiv Balkrishna Khatu. However there is no record regarding change in the roof of the suit property after the demise of Sadashiv Balkrishna Khatu. The name of Sharad Vishnu Khatu and Sudhakar Vishnu Khatu are mutated in the assessment extract of the year 1990. The defendant complied with the plaintiff's demand of supply of certain documents. Sharad Vishnu Khatu took an objection with the defendant for repairs of the suit property and erection of a water closet and the defendant had intimated about the same to the plaintiff. Hence prayed for dismissal of the suit.

7) Considering the rival contentions raised by both parties to the suit, following issues were framed. The findings to them alongwith reasons are given as under :

<u>Sr. no.</u>	<u>Issues</u>	<u>Findings</u>
1)	Whether the plaintiffs proves that he is in settled possession of the suit property on the date of suit ?	Yes
2)	Whether the plaintiffs are entitled to the relief as prayed for ?	No
3)	What order and decree?	The suit is hereby dismissed

8) In order to substantiate the suit claim, the plaintiffs examined themselves as P.W.1 and P.W.2 at Exh. 38 and 38 respectively, Gangadhar Parshuram Khatu as P.W.3 at Exh. 36, Dayaram Shankar Choche as P.W.4 at Exh. 37, Chetan Maruti Vhaval as P.W.5 at Exh. 43, Vijay Parshuram Khatu as P.W.6 at Exh. 64, Pramod Ramchandra Dhavan as P.W.7 at Exh. 65 and Dhaku Mahadev Utekar as P.W.8 at Exh. 66. Besides these oral testimonies, the plaintiff relied on documentary evidence viz. death certificates of Subhadra Sadashiv Khatu, Sadashiv Balkrishna Khatu and Sudhakar Sadashiv Khatu (Exh.22,23 and 24 respectively), assessment extract of the suit property for the year 2013-2014(Exh. 25), house tax receipt(Exh. 26), order dated 10.04.2014 of Appellate authority under Right to Information Act (Exh.27), intimation letter by the defendant to the plaintiff regarding objection taken by Sharad Vishnu Khatu(Exh.28), permission by plaintiff to erect a water closet(Exh.29), letter of issuance of assessment extract of year 1994-1995(Exh.30), postal acknowledgment(Exh.32), notice to defendant through Advocate(Exh.31), Form no 8A (Exh. 44), letters and reminders by plaintiffs (Exh. 45 to 63) and house tax receipt(Exh.74).

The defendants though resisted the suit did not led any evidence in his support.

REASONS

As to issue no. 1 : (*Possession of plaintiffs*)

9) Although the defendants have not adduced any evidence, it is incumbent to scrutinize the evidence led by the plaintiffs. The plaintiff no. 2 is the mother of the plaintiff no. 1. The evidence of the plaintiff no. 2 is the replica of evidence of the plaintiff no. 1. It came in their evidence that the suit property was initially owned and possessed by the grandfather of the plaintiff no. 1 i.e. Sadashiv Balkrishna Khatu. The contention is substantiated by the house tax receipt (Exh.74) of the year 1989-1990 depicting the name of said Sadashiv Balkrishna Khatu. After his demise the suit property was possessed as well as maintained by the grandmother Subhadra and father of plaintiff no. 1 Sudhakar and thereafter by the plaintiffs. The possession of the plaintiffs is not denied by the defendants. They further deposed that Subhadra and Sudhakar had repaired the ceiling of the suit property and incurred all its expenses. Sharad Vishnu Khatu, the uncle of the plaintiff no. 1 who was elected as Member of Legislative Assembly neither paid any attention to the suit property nor spent a penny for it. The plaintiffs resided at Mumbai. They used to visit and maintain the suit property regularly while their visits for festivals.

10) The evidence of Gangadhar (PW3), Dayaram(PW4) and Vijay (PW6) as well as Pramod (PW7), Dhaku(PW8) and Ramchandra(PW9) examined by the plaintiffs unveils the condition of the suit property. Gangadhar (PW3), Dayaram(PW4) and Vijay (PW6) deposed that they are relatives of the plaintiffs and the suit property is in dilapidated condition warranting repairs. It also came in their evidence that Sharad Vishnu Khatu is no way concerned with the suit property and the suit property is possessed by the plaintiffs.

11) The neighbours Pramod(PW7), Dhaku(PW8) and Ramchandra (PW9) also deposed that the suit property is in dilapidated condition warranting repairs and Sharad Vishnu Khatu is no way concerned with the suit property and the suit property is possessed by the plaintiffs. Except ignorance of mutation of the name of Sharad Vishnu Khatu in the revenue records nothing fruitful was extracted by the defendants from the cross-examination of these witnesses.

12) The evidence of the plaintiffs corroborated by the evidence of the plaintiff witnesses and the documentary evidence explicit possession of the plaintiffs.

Hence finding to issue no. 1 is answered in the affirmative.

As to issue no. 2: (Entitlement of relief)

13) The name of grandfather of plaintiff no. 1 Sadashiv Balkrishna Khatu appears on the tax receipts of the year 1990 issued by the Gampanchayat while the names of the plaintiff no. 2, Sharad Vishnu Khatu and his wife Gita Sharad Khatu appears on the tax receipts of the year 2013, 2014 and 2015(Exh.26) and Form no 8A (Exh. 44).

From the perusal of the remaining documents, it is manifest that the plaintiffs had applied for deletion of the name of Sharad Vishnu Khatu and the reminders (Exh.45 to 63) were sent to the defendants from time to time. The plaintiffs had also sought permission from the defendants to construct a water closet besides the suit property vide application(Exh.29). However the defendants expressed their inability to grant permission for the same vide their

reply (Exh.75) to the plaintiffs since Sharad Vishnu Khatu had raised an objection to do so.

14) The plaintiffs argued that the name of Sharad Vishnu Khatu is wrongly mutated without any conveyance deed in his favour. The plaintiffs have filed the present suit for mere declaration that they are absolute owners of the suit property and name of Sharad Vishnu Khatu and Geeta Sharad Khatu are wrongly and illegally mutated. The plaintiffs further argued that for the purpose of carrying out the repairs of the suit property declaration of plaintiffs as absolute owners of the suit property is necessary.

15) The assessment extract(Exh.25) of the year 2013-2014 and tax receipt(Exh.74) of the year 1990 issued by the defendants depicts the names of the father of the plaintiff no. 1 Sadashiv Balkrishna Khatu while the names of the plaintiff no. 2, Sharad Vishnu Khatu and his wife Geeta Sharad Khatu appears on the tax receipts of the year 2013, 2014 and 2015(Exh.26). Surprisingly the plaintiffs have failed to array Sharad Vishnu Khatu and Geeta Sharad Khatu as parties against whom they are seeking the relief.

16) The plaintiffs claims their sole title to the suit property. It is not the case of the plaintiffs that Sharad Vishnu Khatu and Geeta Sharad Khatu have denied the title of the plaintiffs or have relinquished their share in the suit property. No evidence is on record in that behalf. The possession of the plaintiffs to the suit property is not denied by the defendants.

From the evidence on record, it is vivid that the plaintiffs are not the absolute owners of the suit property. As a result, the exclusive title of the plaintiffs to the suit property cannot be inferred

and taken into account. In this eventuality the defendants cannot be directed to delete the names of Sharad Vishnu Khatu and Geeta Sharad Khatu.

Hence issue no. 2 is answered in the negative.

As to point no. 3 :

17) In view of the above discussion and findings to issue nos. 1 and 2, the following order is passed :

ORDER

- 1) The suit is hereby dismissed.
- 2) Parties to bear their own costs.
- 3) Pronounced in open Court.
- 4) Decree be drawn up accordingly.

Place : Mahad

Date : 22.08.2017

(J.T. Koregaonkar)

Civil Judge, Junior Division, Mahad