

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's orders or Registrar's	Court's or Judge's orders.
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SECOND APPEAL NO. 575 OF 2015
WITH CA/13582/2015 IN SA/575/2015

SHEETAL GULABRAO PATIL
VERSUS
BHIBHISHAN NARHARI BARADE AND OTHERS

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Advocate for Appellant : Mr. E.P.Sawant, Advocate h/f Mr.
Kale Mahesh P.
Advocate for Respondent No.1/ Caveator: Mr. K. R. Doke.

CORAM: T. V. NALAWADE,J.
DATED: 27th OCTOBER, 2015.

PER COURT:

1. The appeal is filed against judgment and decree of Regular Civil Suit No 102 of 2002 and also against the judgment and order of Regular Civil Appeal No.133 of 2014. The suit was filed by Respondent Bhimbhishan Barade for relief of declaration and possession. The suit is partly decreed and relief of declaration and possession is given in respect of the portion which is in possession of defendant No.3 Gulabrao. Heard learned counsel for the Appellant.

2. It is the case of the plaintiff that the defendant No.2 Bhimrao is his real brother and defendant No.1 Hirabai is wife of defendant No.2. It is contended that plaintiff had purchased portions of 82 Are and 79 Are from Laxman Sopan Takle which are of Gat No.308 situated in village Shirsav, Tahsil Paranda. The sale deeds were executed in favour of plaintiff on 19th July, 1985 and 6th April, 1988. It is contended that the defendants have no concern whatsoever with the property purchased by plaintiff under the two sale deeds.

3. It is the case of plaintiff that there was some family dispute between defendant Nos.1 and 2 and he had acted as mediator to settle the dispute. It is his case that he was in possession also of the property but behind his back, and due to the trust shown by him on defendant Nos.1 and 2, defendant No.1 some how got entered her name in the revenue record of the aforesaid portions, as the owner.

4. The suit was filed on 30th April, 2002 and initially relief of declaration and injunction was claimed. During the pendency of the matter, defendant No.1 sold the property in favour of defendant No.4 who was minor on

the date of sale deed. It is contended that defendant No.3, the father of defendant No.4, was shown as the guardian of defendant No.3. It is contended that during pendency of the suit they forcibly took possession of this property.

5. Defendant No.1 filed written statement and she admitted the relationship. She denied that she had managed to get entered her name in the revenue record. She contended that it was joint Hindu family property of plaintiff and defendant No.2. She contended that partition was effected of the joint Hindu family properties and under the partition this property was given to defendant No.1 and so her name was entered in the revenue record. Defendant No.2 filed consent written statement and he admitted the claim of the plaintiff. The matter proceeded without written statement as against defendant Nos.3 and 4, the purchasers during pendency of the suit.

6. On the basis of aforesaid contentions issues were framed. The trial Court has held that plaintiff is the owner of the suit property. Relief of possession is given and a direction is given to defendant No.3, who was in

possession on the basis of the sale deed for defendant No.4.

7. The learned counsel for Appellant, purchaser submitted that during pendency of the suit she had become major but proper procedure was not followed and the suit summons was not served on her and so the decree is defective and on that point substantial question of law needs to be formulated. Learned counsel submitted that she was minor and the procedure of registration of the suit was not followed and so her case of bonafide purchaser needs to be considered by the trial Court and on that point substantial question of law needs to be formulated and for decision on this point matter needs to be remanded back to the trial Court.

8. This Court has carefully gone through the judgment delivered by the Courts below. As per the record, every tactic was played by defendant Nos.3 and 4 to protract the decision of the suit. Their Advocate had sought multiple adjournments for filing written statement. When defendant No.4 became major, plaintiff had taken steps in that regard and so suit summons was issued to her and it was served upon her. Then, the same counsel

had filed appearance for her in the suit. Thus, it cannot be said that procedure was not followed and opportunity was not given to her when she became major.

9. So far as the other contention made by the learned counsel that the case of appellant that she is bonafide purchaser needs to be considered, is concerned, this Court has decided this point in ***Second Appeal No. 570 of 2015 [Shivaji S/o Bhausaheb Bankar V/s Jajabai Prabhakar Alwane and others]*** by order dated 21st October, 2015. This Court has held that Maharashtra Amendment to Section 52 has not become applicable and so the principles laid down in section 52 of Transfer of Property Act is applicable as it is. This Court has laid down that such a purchaser is even not necessary party to the suit and the decree can be executed against such purchaser. In view of this position of law, and as the present proceeding is nothing but an attempt to protract the things, this Court holds that there is no room for formulation of substantial questions of law. There is no question of considering the defence of bonafide purchaser also as the vendor herself was not owner, in any way. The property was standing in the name of

plaintiff in the past, it was owned by him and the property could have been given to the vendor by Appellant only as provided under the Transfer of Property Act.

10. In the result, the appeal stands dismissed.

11. In view of final disposal of the appeal itself, nothing further survives in the civil application for stay and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.27/10/2015
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