

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

907. SA/407/2015

With

CA/10004/2015 In SA/407/2015

BHALCHANDRA DATTATRAYA SHELKE

V/S

MANORMABAI SURESHSHRAO GHULE AND OTHERS

Mr. K.M. Nagarkar, Advocate for appellant.

Mr. S.R. Deshpande, Advocate for respondent No. 1.

Mr. R.P Shastri, Advocate for respondent Nos. 2 & 3A.

CORAM : T.V. NALAWADE, J.

DATED : 15th October, 2015.

ORDER :

1. The appeal is filed to challenge the judgment and order of Regular Civil Appeal No. 61/2008, which was pending in the Court of Principal District Judge, Ahmednagar. This appeal was filed by present respondent No 1, original plaintiff to challenge the decision of Regular Civil Suit No. 84/2002 which was pending in the Court of Civil Judge, Junior Division, Shevgaon. The suit filed for relief of possession was dismissed by the trial Court. This decision is set aside by the first appellate Court and suit is decreed for possession. Heard both the sides.

2. Plaintiff - Manoramabai is a sister of defendant Nos. 1 to 3. The suit was filed in respect of property No.54/2 (new No.

76), having area of 695 Sq. Fts. As per city survey record, the property is given C.T.S. No. 2023. It is the case of plaintiff that she purchased the suit property under registered sale deed dated 8.8.1998 for valuable consideration from the owner Ramkishan Baldava. It is the case of plaintiff that she received the possession on the date of sale deed. Initially she had contended that she was in possession of the property and when she started making construction, the defendants created obstruction and so, she had claimed the relief of injunction. Subsequently, she prayed for relief of possession.

3. The defendant No. 1 filed written statement and other defendants took similar defence. They contended that the suit property was originally owned by their father Dattatraya Shelke and as their father was in need of money, nominal sale deed of suit property was executed in favour of Ramkishan Baldava. It is contended that possession was not handed over to Ramkishan and the possession remained with Dattatraya and after Dattatraya, with the defendants.

4. It is the case of defendants that they got reconveyance of the property, but the property was purchased in the name of plaintiff and wife of one of the defendants namely

Vimalabai Shelke. It is contended that due to this transaction, house property No. 54 was divided in to two parts. It is contended that Vimalabai, wife of defendant No. 3, started living in one part and in the remaining part, defendant No. 1 started living.

5. It is the case of defendant No. 1 that plaintiff had asked him to hand over the possession in the notice dated 2.12.1997. It is contended that after that the parties settled the dispute and he gave Rs. 6,000/- to the plaintiff. It is contended that after accepting this amount, permission was given by the plaintiff to defendant No. 1 to make construction and accordingly, he made the construction of house and he has been living in that house. It is contended that he has paid house tax, water charges etc. It is contended that to extract more money from him, the plaintiff has filed false suit.

6. On the basis of aforesaid pleadings, issues were framed. The trial Court dismissed the suit by giving reasoning that on the date of suit, defendants were in possession and plaintiff failed to prove that she had lost the possession after the sale deed and she was in possession till the year 1997.

7. The first appellate Court has held that there was no room for defendants to dispute the title of plaintiff over the suit property as the sale deed is executed in her favour. The first appellate Court held that there was no defence taken on the basis of which the possession of the defendants can be protected over the suit property.

8. Admittedly, the sale deed of the year 1998 was executed in the name of plaintiff only and that is in respect of the suit property. The property is specifically described as western portion of house No. 54 and the length and width of every side is given. The sale deed does not show that the defendants were present at the time of execution of sale deed in any capacity. Admittedly, on the date of sale deed plaintiff was married and her place of residence was also shown as place from Aurangabad. There is virtually nothing with the defendants to show that it was *Benami* transaction. It cannot be believed that the brother or brothers will purchase the property in the name of their married sister. Further, the case that some portion was purchased in the name of wife of defendant No. 3 under separate sale deed and the case that defendant No. 1 had paid Rs. 6,000/- to plaintiff and plaintiff relinquished her rights show that transaction of 1988 was not a *Benami* transaction.

9. The aforesaid material shows that plaintiff is the owner of the suit property. The defence of only aforesaid nature was taken by the defendants and so, there was no other alternative before the first appellate Court, which is the last fact finding Court, to decree the suit. The reasoning given by the trial Court was not at all convincing and it was against the principles laid down in Evidence Act regarding burden of proof and also the provision of Article 65 of Limitation Act.

10. The learned counsel for the appellant placed reliance on the case reported as **(2007) 6 Supreme Court Cases 100 [Binapani Paul Vs. Pratima Ghosh and Ors.]**. The facts of this reported case were altogether different and in view of the facts of the case, some observations were made with regard to the nature of transaction, *Benami* transaction. The facts of the present case are totally different. There is no convincing evidence with defendants to show that it was *Benami* transaction and on the contrary, there are circumstances, which are against the case of *Benami* transaction. There is no material at all on the record on the basis of which substantial question of law can be formulated.

11. In the result, appeal stands dismissed. Eight weeks time is given to challenge the decision. The decision on the amount of security deposited by the appellant will be taken during execution proceeding and at the time of consideration of entitlement of the plaintiff to get mesne profit. Civil Application for stay is disposed of.

[T.V. NALAWADE, J.]

ssc/