

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 10 OF 2008

MR. RAJENDRA DATTARAM SHIRODKAR ... Appellant
Versus
SHRI. PRAKASH DATTARAM SHIRODKAR
(DECEASED) THROUGH LR'S ... Respondent

Shri Joaquim Godinho, Advocate for the Appellant.
Shri Sudin Usgaonkar, and Ms. V. Palyekar, Advocates for LR's. of
respondents No.1(a) to 1(e).

Coram:- F. M. REIS, J.

Date:- 16th January, 2015

P.C.:

Heard Shri J. Godinho, learned Counsel appearing for the
appellant and Shri Sudin Usgaonkar, learned Counsel appearing for
the respondents.

2. Shri J. Godinho, learned Counsel appearing for the appellant
assails the judgments of the Courts below essentially on the ground
that the disputed Deed of Sale dated 26th September, 1991 was
executed in favour of the appellant and, as such, the question of
claiming that the sale deed was for the benefit of all the heirs of the
deceased who was the original tenant of the property, cannot be
accepted. The learned Counsel further points out that as the
consideration was paid by the appellant, both the Courts below have
misconstrued the documents on record to erroneously come to the

conclusion that the sale deed was for the benefit of all the heirs of the deceased.

3. Shri Sudin Usgaonkar, learned Counsel appearing for the respondents, on the other hand, has pointed out that besides the proceedings initiated by the appellant which is subject-matter of the above appeal, there was another suit being Regular Civil Suit No.132/1998 filed by the appellant, claiming partition of the property which was subject-matter of another sale deed of the same date. The learned Counsel further points out that the said suit was dismissed, inter alia, on the ground the sale deed which was executed in favour of the appellant was for the benefit of the heirs of the deceased. Shri Usgaonkar as such points out that in view of the conclusive findings in the said proceedings, there is no question of interference in the impugned judgments, by this Court.

4. I have considered the submissions and I have gone through the record. By an order dated 8th July, 2009, passed in the above appeal, there was a specific submission by both the Counsel that the dispute arising in the present appeal was substantially the same as the dispute which was in Regular Civil Suit No. 132/1998 filed by the appellant herein. As such, this Court had stayed the above appeal to await the judgment in the said proceedings. Shri Godinho, learned Counsel appearing for the appellant fairly points out that the said proceedings have been finally disposed of by this Court by order

dated 9th October, 2013 in Second Appeal Nos. 75 and 76 of 2013. It is also not in dispute that in the said proceedings, there was a finding arrived at by this Court to the effect that the sale deed was for the benefit of all the LRs. of the deceased father of the appellant.

5. In such circumstances, as the said findings have attained finality and the parties to the above appeal were also parties to the said proceedings, the question of taking a contrary view in the above appeal, would not arise. For the reasons stated in the said proceedings which have attained finality between the parties herein, there is no question of interfering in the impugned judgments in the present appeal. Hence, I find that that no substantial question of law arises in the present appeal for consideration under Section 100 of the Code of Civil Procedure.

6. The appeal stands, rejected, accordingly.

F. M. REIS, J.

ssm.