

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.116 OF 2014
along with
CIVIL APPLICATION NO.284 OF 2014
in
SECOND APPEAL NO.116 OF 2014**

Sou.Yashoda Tuljaram Burudkar & Ors. .. Appellants/Applicants
Vs.

Mrs.Shantabai Walchand Chavan & Ors. .. Respondents

Mr.Anand Kulkarni for the appellants/applicants.

Mr.D.V.Sutar for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 18th November 2015

P.C.

. By this appeal, the appellants seek to impugn part of the common order dated 13th December 2013 passed in various appeals including Civil Appeal No.141 of 2013 rejecting the appeal filed by the appellants. Some of the relevant facts for the purpose of deciding this appeal are as under :-

2. The original plaintiff had claimed certain undivided rights in respect of the suit property. The defendant no.1, however, has sold the suit property during his life time. The original plaintiffs have filed a partition suit and challenged the sale effected by the defendant no.1 on the ground that there was no legal necessity to sell the suit property. It is not in dispute that during pendency of the said partition suit, the defendant no.1 had purported to have sold the suit property to the original defendant no.14. The original defendant no.14 was impleaded

as party-defendant to the said partition suit. In so far as the present appellants are concerned, the appellants were not parties to the said partition suit. After hearing the parties to the partition suit including the original defendant no.14, the trial Court passed the judgment and decree on 1st January 2011 thereby partly decreeing the said suit and declaring that the plaintiffs had 6/125th share each in the suit land bearing Gat No.15/5 admeasuring 1H 37 R, situated at Nehru Nagar, Tal. North Solapur, Dist.Solapur and other consequential reliefs. The trial Court also declared that the sale deed dated 1st February 2008 executed by the defendant nos.1 to 6 and others in favour of the defendant no.14 in respect of the suit land is not binding on the plaintiffs' share of 6/125th each.

3. The said judgment and decree passed by the trial Court on 1st January 2011 was impugned by some of the defendants including the defendant no.14 before the District Court, Solapur. The original defendant no.14 had filed a Regular Civil Appeal No.270 of 2012.

4. During pendency of the proceedings, the defendant no.14 entered into further writing with the appellants herein on 11th July 2013 and accordingly filed an appeal against the said judgment and decree passed by the trial Court. All such appeals including the appeal filed by the original defendant no.14 were heard by the District Judge and disposed of by a common order.

5. By the common order and judgment dated 13th December 2013, all the appeals including the appeal filed by the original defendant no.14 and the present appellants came to be dismissed.

6. The appellants have impugned the order and judgment dated 13th December 2013 in so far as rejection of the appeal filed by the appellants is concerned.

7. Learned counsel appearing for the appellants submits that the appellants were bonafide purchasers without notice and thus the learned District Judge could not have rejected the appeal filed by the appellants. He submits that there was no stay granted by the trial Court when the appellants had purchased the suit property from the original defendant no.14 and thus the transaction between the respondent nos.1 to 7 and the original defendant no.14 could not have been declared as null and void.

8. Learned counsel appearing for the original plaintiffs supported the findings rendered by the trial Court as well as by the appeal Court and submits that the appeal filed by the original defendant no.14 through whom the appellants claim the purported right has also been rejected on 13th December 2013. The original defendant no.14 has not filed any second appeal against the said order dated 13th December 2013 and thus the order passed by the trial Court as well as the District Court in so far as the defendant no.14 is concerned, has attained finality.

9. Learned counsel invited my attention to the findings rendered by the trial Court as well as by the appeal Court in so far as the original defendant no.14 is concerned and submits that the finding against the defendant no.14 that he was not a bonafide purchaser without notice has attained finality. The appeal filed by the original

defendant no.14 having been rejected by the District Judge, Solapur, the original defendant no.14 has not challenged the said order. He submits that since the appellants have been claiming through the original defendant no.14 whose title itself is declared as void by the Courts below, the appellants cannot get a title better than the title of the defendant no.14 and thus the appellants have no independent right in the property.

10. I have perused the orders passed by the trial Court as well as by the District Court with the assistance of the learned counsel for the parties. A perusal of the judgment and decree passed by the trial Court clearly indicates that the trial Court has rendered a finding of fact that the defendant no.1 had failed to prove that he had sold the suit land to the defendant no.14 for the benefit of Hindu Undivided Family and the defendant no.14 was a bonafide purchaser for value without notice. It is also not considered by the learned trial Judge that the alleged sale transaction between the defendant no.1 and the defendant no.14 had taken place during pendency of the suit and therefore, the same transaction is hit by the principles of *Lis-pendency* as contemplated in Section 52 of the Transfer of Property Act.

11. A perusal of the evidence led by the plaintiffs and also the defendant no.14 indicates that the trial Court came to the conclusion that the defendant no.14 was not a bonafide purchaser without notice and had not taken utmost care before entering into any such transaction with the defendant no.1. The appellants were not parties to the suit since the appellants had alleged to have purchased the property during pendency of the appeal.

12. A perusal of the order passed by the appeal Court clearly indicates that the appeal Court has also rendered a similar finding of fact that the defendant no.14 was not a bonafide purchaser without notice and had not taken utmost care before entering into the alleged transaction between the defendant no.1 and the defendant no.14 and had not produced any documentary evidence prior to execution of the sale deed with the defendant no.1. It is not in dispute that the original defendant no.14 through whom the appellants claim the right has not filed second appeal impugning the said judgment and decree dated 13th December 2013 passed by the District Court at Solapur.

13. In so far as the Regular Civil Appeal No.141 of 2013 filed by the appellants is concerned, the learned District Judge after considering the submissions made by the appellants and after perusing the record has negatived the submission made by the appellants that the appellants were the bonafide purchasers without notice. The appellants also did not produce any such record showing the steps taken by the appellants before entering into any transaction with the original defendant no.14 during pendency of the appeal.

14. In my view, since the title of the original defendant no.14 who had alleged to have purchased the property from the defendant no.1 was declared as void by the trial Court which finding has been upheld by the District Court and the same has not been impugned by the original defendant no.14 by filing any proceedings, the said finding had attained finality. It is not in dispute that the appellants herein have been claiming their so called right through the original defendant no.14. Since the defendant no.14 had been found having no title, the appellants

cannot get the title better than the title of the defendant no.14. Be that as it may, the order passed by the learned District Judge clearly indicates that all submissions made by the appellants have been duly considered and the appeal Court has rendered a finding that the appellants were not bonafide purchasers and did not take utmost care by the defendant no.14.

15. In my view, the findings rendered by the appeal Court are not perverse. There is no substantial question of law arising in the present appeal. The appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.