

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.400 OF 2012

(Shri Sambha Shankar Manjare Vs. Shankar Dagadu Gulme and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri Ajay A. Joshi, Advocate for Appellant.

Shri P.R. Arjunwadkar, Advocate for Respondents.

CORAM: R.K. DESHPANDE, J.

DATE: 10th AUGUST, 2015.

The defendant Nos.1 to 4 are the owners of the suit property and the defendant Nos.1 and 2 by agreement dated 17.03.1979 agreed to sale half portion from the western side of the suit property admeasuring 4 H. and 15 R. land to the plaintiff. Accordingly, on 26.03.1980 registered sale deed was also executed in favour of plaintiff by the defendant Nos.1 and 2 in respect of such portion. The defendant Nos.3 and 4 have filed two separate Regular Civil Suit Nos.204 of 1979 and 205 of 1979 for grant of permanent injunction restraining the defendants from interfering with their possession over the suit property which is half portion from the western side which was sold by the defendant Nos.1 and 2. The present plaintiff was also party in both the suits. The decree passed in both two suits holding that the defendant Nos.3 and 4 are the owners of half portion from the western side of the suit property, the decree for permanent injunction is passed

which has attained the finality. In this background, the plaintiff has filed the present suit for declaration of title on the basis of the sale deed dated 26.03.1980 in respect of the eastern side portion owned by the respondent Nos.1 and 2 for possession. The Trial Court passed a decree in favour of the plaintiff, whereas the Lower Appellate Court has reversed it hence, the plaintiff is before this Court.

In the light of the aforesaid factual position **admit** on the following substantial question of law.

Whether the Lower Appellate Court was right in denying relief to the plaintiff on the ground that the plaintiff has failed to file a suit for rectification of instrument i.e. sale deed dated 26.03.1980 more particularly, when the finding of fact recorded in Regular Civil Suit Nos.204 of 1979 and 205 of 1979 to the effect that the defendant Nos.1 and 2 are the owners of the eastern portion and the defendant Nos.3 and 4 are the owners of western portion of the suit property?

The learned counsel for the respondents waives service of notice.

Civil Application (CAS) No.154/2014:

Issue notice to the proposed legal

representatives of respondent No.3, returnable after eight weeks.

Service by RPAD in addition to regular mode of service.

Civil Application (CAS) No.155/2014:

Issue notice to the proposed legal representatives of respondent No.1, returnable after eight weeks.

Service by RPAD in addition to regular mode of service.

Civil Application St. No.7691/2013:

Issue notice to the proposed legal representations of respondent No.5, returnable after eight weeks.

Service by RPAD in addition to regular mode of service.

Civil Application St. No.7688/2013:

Issue notice to the proposed legal representations of respondent No.10, returnable after eight weeks.

Service by RPAD in addition to regular mode of service.

Civil Application St. (CAS) No.6322/2013:

For the reasons stated in the application, the

application is allowed. The address of respondent Nos.7, 8 and 9 be corrected within a period of one week from today.

Office to explain as to why the applications are not registered for put on stamp.

JUDGE

NSN