

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

RC/1094/2010
WITH
CIVIL APPLICATION NO.168 OF 2015
IN
RC/1094/2010

Smt. Subhadra Shamrao Pawar and
ors.

.. Applicants.
Org. Appellants.

V/s

Dinkar Sakharam Pawar and ors.

.. Respondents.
Org. Respondents.

Mr. Amit Sale, for the Applicants/Appellants.

**CORAM : RAVI K. DESHPANDE, J.
DATED : 15th JULY, 2015**

P.C.

1. Heard the learned counsel appearing for the appellants. For the reasons stated in the Civil Application, I am satisfied that the sufficient cause is made out for the condonation of delay caused in filing the application for restoration of the appeal and the case is also made out for the restoration of the Second Appeal. The application is allowed and the Second Appeal is restored.

2. Heard the learned counsel appearing for the appellants on merits of the appeal. On 27th February, 2007, the Trial Court granted a declaration in Special Civil Suit No.407 of 1996 that the plaintiff No.1 has established that the other plaintiffs have 1/15th share in the suit property. The Trial Court has also held that the sale deed dated 21st July, 1995 executed by the defendant No.1 in favour of the defendant No.2 is not binding upon the plaintiffs. This is set aside in Regular Civil Appeal No.159 of 2007 by Lower Court on 30th November, 2007. Hence, the plaintiffs are before this Court in this Second Appeal to challenge the decision of the Lower Appellate Court to the extent to set aside the decree passed by the Trial Court declaring that the sale deed dated 21st July, 1995 is not binding upon the plaintiffs.

3. With assistance of the learned counsel for the appellants, I have gone through the findings recorded by both the Courts below. The property was the ancestral property in the hands of

the defendant Ashok, who sold it to the defendant No.2 on 21st July, 1995. The Lower Appellate Court has taken view that at the time of execution of the sale deed, the daughters were not the coparceners and therefore, had no right to claim the partition. The Lower Appellate Court has held that the sale of the property was for legal necessity to discharge a loan of the Land Development Bank and there is nothing on record to show that the defendant No.1 was addicted with vices. The findings of the Lower Courts below based on the evidence on record and does not give any rise to any substantial question of law in the Second Appeal. Second Appeal is dismissed.

(RAVI K. DESHPANDE, J.)