

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

SECOND APPEAL NO.482 OF 2015

Sakharam Bapu Kore	...	Appellant
V/s.		
Balkrishna Gopal Godse		
(Since deceased through LR's)		
1A. Rukmini Balkrishna Godse & Ors.	...	Respondents

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Mr.Wadikar i/b. Mr.Nandu Pawar, Advocate for the Appellant.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JULY 1, 2015.

P.C.

1. The appellant is the original plaintiff, who filed Regular Civil Suit No.122 of 1996 claiming relief of declaration that the sale-deed dated 8-3-1968 executed by his father, who was joined as the defendant No.1, in favour of the defendant no.2 was bogus and without any consideration. The appellant also claimed a decree for permanent injunction restraining the defendants from disturbing his possession over the suit property. The Trial Court decreed the suit on 23-1-2009 in favour of the plaintiff. Regular Civil Appeal No.148 of 2009 was preferred by the defendant Nos.3 and 4, whereas Regular Civil Appeal No.385 of 2009 was preferred by the defendant No.1. Both these appeals

are decided by a common judgment and order dated 9-12-2014 by the learned Ad hoc District Judge-2, Satara. Both the appeals are allowed. The judgment and decree passed by the Trial Court is set aside, and Regular Civil Suit No.122 of 1996 has been dismissed. Hence, the original plaintiff is before this Court in this second appeal.

2 The question before the Courts below was whether the plaintiff has established that the sale-deed dated 8-3--1968 executed by his father, the defendant No.1, in favour of the defendant No.2 is bogus, null and void and without any consideration. It is the contention of the learned counsel for the appellant/plaintiff that the sale-deed dated 8-3-1968, which is the subject-matter of the suit, does not pertain to the suit property. He has invited my attention to the findings recorded by the Trial Court in support of this contention and also to the finding of the Trial Court holding that the plaintiff has proved the possession. The lower Appellate Court has held that the sale-deed dated 8-3-1968 at Exhibit 119 was executed by the defendant No.1 in favour of the defendant No.2 after accepting the valid consideration and there was no fraud practised upon the defendant No.1 while executing the sale-deed.

3 Undisputedly, the mortgage-deeds were executed on 5-8-1946 and 26-4-1965 by the defendant No.1 in favour of the defendant No.2 in respect of the suit property. The execution of both these documents has not been disputed and those are also proved and marked as Exhibits 117 and 118 respectively. The Appellate Court has held that the defendant No.2 has admitted in his written statement the receipt of the amount of mortgage money from the defendant No.1. The execution of the sale-deed dated 8-3-1968 at Exhibit 119 has also been established. The receipt of consideration for sale at Exhibit 119 is also established. The Appellate Court has taken into consideration the evidence of the witnesses of the plaintiff, which has been disbelieved on the ground that the plaintiff was not even born when the documents were executed and the other witnesses were not present at the time of execution of these documents at Exhibits 117, 118 and 119. The oral evidence of the witnesses on the point of possession of the plaintiff has also been disbelieved and satisfactory reasons are recorded. The Appellate Court has also noted that the name of the defendant No.1 was mutated in the revenue record on the basis of the mortgage-deed dated 5-8-1946. The plaintiff raised a plea of partition of suit property in the year 1988 and placed reliance upon the revenue

entries made in the year 1995 in respect of the suit property on the basis of such partition between the plaintiff and his brothers. In reference to it the Appellate Court has held that once the sale of the suit property on 8-3-1968 at Exhibit 119 is established, the effect of partition in the year 1988 loses its significance.

4 The Trial Court has gone into the description of the property mentioned in the plaint as well as in the sale-deed dated 8-3-1968 at Exhibit 119. Reliance is placed upon the evidence of one Avinash Jaywant Mane, examined by the defendant Nos.3 and 4, deposing in the cross-examination that in the sale-deed dated 8-3-1968 and in the mortgage-deed dated 26-4-1965, the area of Gat No.1163/2 (admeasuring 7 R), the Gat No.1163/1 (admeasuring 60 R) is not mentioned in the deeds. The Trial Court has held that the witness has admitted the fact that in the deeds, the survey numbers are inadvertently mentioned and their area is also not correctly mentioned. Relying upon this finding of the Trial Court, it is urged by the learned counsel for the appellant/plaintiff that the suit property is not covered by the sale-deed dated 8-3-1968.

5 It is not possible to accept the aforesaid contention, and the finding recorded by the Trial Court does not help in any

manner to the appellant/plaintiff. The plaintiff has come up before the Court with a case that the sale-deed dated 8-3-1968 is void *ab initio*, as it is without valid consideration. If the sale-deed at Exhibit 119 does not pertain to the suit property, then it was not necessary for the plaintiff to claim such a declaration. Though the suit is filed for grant of permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the suit property, it is not based upon the title of the plaintiff, but the pleadings are that the title never passed to the defendant No.1 on the basis of the sale-deed at Exhibit 119. In view of this, if the finding recorded by the Trial Court is accepted, then it goes against the plaintiff himself.

6 The limitation to file a suit for cancellation and setting aside an instrument is governed by Article 59 of the Limitation Act, which prescribes a period of three years from the date of knowledge of such instrument to the plaintiff. No doubt, that the plaintiff has averred in the plaint that he acquired the knowledge of such sale-deed in the year 1995 and the suit was filed in the year 1996. The lower Appellate Court has recorded a categorical finding that the plaint was drafted by the Advocate on the instructions of the defendant No.2 and the brother of the plaintiff. It is the finding recorded that the suit was filed after

consultation with the defendant No.2. The Trial Court has recorded the finding that the defendant No.2 was in active politics. He was a Member of Municipal Council, Rahimatpur, for a period of 10 years and it is difficult to believe that the plaintiff got knowledge of this sale-deed for the first time in the year 1995, though he retired from Indian Army and came to Rahimatpur in the year 1989. The Appellate Court has held that the suit was barred by the period of limitation as prescribed.

7 In view of the above, the findings of fact recorded by the lower Appellate Court do not give rise to any substantial question of law. The Second Appeal is dismissed.

(RAVI K. DESHPANDE, J.)