

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

**SECOND APPEAL NO.645 OF 2015
WITH
CIVIL APPLICATION NO.1383 OF 2015**

Smt.Shevantabai V. Misal

.. Appellant

vs.

Udhav Gorakh Misal

(since deceased through legal heirs) and Ors. .. Respondents

Mr.Dilip Bodake for the appellant

**CORAM : K.K.TATED, J.
DATED : 30/09/2015**

PC:

- 1 Heard the learned counsel for the appellant.
- 2 This Second Appeal is preferred by plaintiff challenging the concurrent finding of fact recorded by both the courts below.
- 3 In the present proceeding, the plaintiff preferred Special Civil Suit No.542 of 1998 in the court of Joint Civil Judge, Senior Division, Sangli for an injunction and declaration that the plaintiff is owner of the suit property i.e. agricultural property bearing gut no.1185, 1214 1215, 1575 and other house properties.
- 4 In the present proceeding, the plaintiff by sale deed dated

18.7.1979 sold the suit property to the defendant no.1. Thereafter, the defendant no.1 sold the same to defendant nos.2 to 4 by sale deed dated 22.4.1997. Plaintiff filed the suit on the ground that defendant no.1 obtained registered sale deed dated 18.7.1979 by fraud and without paying any consideration. Hence, same may be set aside and defendant may be directed to hand over vacant and peaceful possession of the suit property. The Trial Court by the Judgment and Decree dated 7.6.2007 dismissed the plaintiff's suit. Hence, the plaintiff preferred Regular Civil Appeal No.4 of 2008. That was also dismissed by the Appellate Court by decree dated 6.1.2015. Hence, the present Second Appeal.

5 The learned counsel for the plaintiff submits that both the courts below erred in coming to the conclusion that the plaintiff executed the sale deed dated 18.7.1979 in favour of defendant and handed over possession of the suit property. He submits that both the courts below failed to consider the fact that taking advantage of the plaintiff's illiteracy defendant no.1 obtained the sale deed dated 18.7.1979 by fraud without paying any consideration. He further submits that even the appellate court failed to comply the provisions of Order 41 Rule 31 of the Civil Procedure Code, 1908 at the time of deciding the appeal. He submits that it is mandatory on the part of the appellate court to decide each and every issue separately by giving reasons. Hence, the the Judgment and Decree passed by both the courts requires to be set aside.

6 I have heard the learned counsel for the appellant at length. I have gone through the photocopy of paper book in Civil Appeal No.4 of

2008 containing the plaint, written statement and deposition of parties produced by the Advocate for the plaintiff. In the present proceeding, the main contention raised by the plaintiff is that the defendant no.1 obtained sale deed dated 18.7.1979 by committing fraud without paying any consideration. It is to be noted that the sale deed dated 18.7.1979 is a registered document. Apart from that, plaintiff has not pleaded the way in which the defendant committed fraud for obtaining sale deed dated 18.7.1979. It is to be noted that as per sale deed dated 18.7.1979, the defendant was in possession of the suit property and thereafter, he sold the same to defendant nos.2 to 4 by sale deed dated 22.4.1997. The plaintiff in her cross-examination specifically admitted that in Regular Civil Suit No.11 of 1979 filed by her mother, she entered into the witness box and stated that the suit property was sold by her to the defendant no.1 by registered sale deed dated 18.7.1979. This itself shows that plaintiff specifically admitted at the time of giving evidence in another Regular Civil Suit No.11 of 1979 that the suit property was sold by her to the defendant no.1. These facts are considered by both the courts below in detail. Even the appellate court in paragraph 15 and 16 considered these facts in detail. This itself shows that the appellate court has considered the provisions of Order 41 Rule 31 of the Code of Civil Procedure, 1908.

7 The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

8 Considering the submissions made by the learned counsel for the

plaintiff and the fact that plaintiff herself admitted in her evidence in Regular Civil Suit No.11 of 1979 that she sold the property in favour of defendant no.1 by registered sale deed dated 18.7.1979 and considering the law laid down by the Apex Court as stated hereinabove, I do not find that any substantial question of law arises in the present Second Appeal. Hence, Second Appeal is rejected.

9 In view thereof, Civil Application does not survive. The same is dismissed as infructuous.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.