

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

SECOND APPEAL NO.648 OF 2014

Shri Shamrao Ganu Pawar and Anr. .. Appellant

Vs.

Shri Sambhaji Hindurao Khot and Ors. .. Respondents

Mr.Rahul P. Walvekar for the appellant

CORAM : K.K.TATED, J.
DATED : 17/10/2015

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 The appellant plaintiff filed Regular Civil Suit No.140 of 2000 in the court of Civil Judge, Junior Division, Shirala at Sangli for declaration that the sale deed executed by defendant no.3 in favour of defendant nos.1 and 2 dated 23.9.1992 was null and void and plaintiff had preferential right to purchase the suit property. The plaintiff also averred that the defendant no.3 agreed to sell the suit property to him by oral agreement. The Trial Court dismissed the suit on the ground that the plaintiff failed to prove preferential right to purchase the suit property as well as the Civil Court has no jurisdiction to entertain the

suit as per section 84 of the Bombay Tenancy and Agricultural Lands Act. Being aggrieved by the said decree, plaintiff preferred Regular Civil Appeal No.63 of 2008 in the District court of Islampur, Dist. Sangli. The appellate court framed following points for consideration.

	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff proves oral agreement of his preferential right to purchase the suit property?	No.
2.	Whether the plaintiff is entitled to declaration as sought?	No.

4 Considering the evidence on record, the appellate court also held that the plaintiff failed to prove his preferential right to purchase the suit property as well as oral agreement between defendant no.3 and the plaintiff. Hence, the present Second Appeal.

5 The learned counsel for the plaintiff submits that both the courts below failed to appreciate that the plaintiff had preferential right to purchase the suit property. He further submits that both the courts erred in coming to the conclusion that the plaintiff failed to prove oral agreement between plaintiff and defendant no.3. He submits that in support of oral agreement, plaintiff examined two witnesses Shivaji More and Shankar More. He further submits that once the appellate court held that Civil court has jurisdiction to entertain the suit filed by the plaintiff, appellate court ought to have remanded the matter to the Trial Court for deciding on its own merits under Order 41 Rule 23 of the Code of Civil Procedure, 1908.

6 On the basis of these submissions, the learned counsel for the

appellant submits that the judgment and decree passed by both the courts below require to be set aside.

7 I have heard the learned counsel for the appellant at length. It is to be noted that in the present proceeding, plaintiff filed the suit for setting aside registered sale deed dated 23.9.1992 executed by defendant no.3 in favour of defendant nos.1 and 2 on the ground that defendant no.3 agreed to sell the suit property to him. Both the courts concurrently held that the plaintiff failed and neglected to prove the oral agreement between himself and defendant no.3. Apart from that, both the courts concurrently held that the plaintiff failed to prove his preferential right to purchase the suit property. Before this court also, plaintiff failed to prove his preferential right.

8 Considering these concurrent finding of facts recorded by both the courts, I do not find any reason to entertain the present Second Appeal in which substantial question of law do not arise.

9 Hence, Second Appeal stands rejected.

(K.K.TATED, J.)