

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

SECOND APPEAL NO.105/2015

Dinanath Kondiba Bhosale & Ors.

... Appellants

V/s.

Rahibai Vasant Bhosale & Ors.

... Respondents

Mr. Suresl S. Shah for the Appellant

CORAM: K.K. TATED, J.
DATED : OCTOBER 13, 2015

PC. :

1. Heard the learned counsel for the Appellants. This appeal is filed by the Plaintiff challenging the concurrent findings of facts recorded by both the courts below.
2. The learned counsel for the Appellant Plaintiff placed on record a photocopy of paper book in civil appeal No.2/2004 containing copy of plaint, written statement and deposition of the parties.
3. For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. Defendant No.2 Vasant Dinanath Bhosale, son of plaintiff and Defendant No.1 Sou. Rahibai Vsant Bhosale as wife of Defendant No.2 and daughter-in-law of the Plaintiff, Defendant Nos.3 and 4 are brothers of the Plaintiff.

4. The Plaintiff filed Regular Civil Suit No. 385/1986 in the court of Civil Judge, Junior Division, Malshiras, Dist. Solapur for declaration and permanent injunction. The subject matter of the suit was land bearing gut No.432 admeasuring 2.81H from village Nevare, Tq. Malshiras, Dist. Solapur. The Plaintiff, in the plaint pleaded that the Defendant obtained his thumb impression on compromise deed dated 23/07/1985 and filed the same in criminal case No.76/1985 without his consent by which the land admeasuring 2.81 H from gut No.432 was allotted in favour of Defendant No.1, daughter-in-law for her maintenance. Hence, the compromise deed dated 23/07/1985 be declared as null and void and Defendant No.1 may be directed to hand over vacant and peaceful possession of the suit property to the Plaintiff. In that suit, the Trial Court framed following issues:

	ISSUES	FINDINGS
1	Does the Plaintiff prove that he is in possession of the suit land ?	No
2	Does the Plaintiff prove that the Defendants obtained his thumb impression on compromise by fraud ?	No
3	Does the Plaintiff prove that the Defendants are obstructing his possession?	No
4	Do the Defendants prove that the Defendant No.1 is in possession of the suit land ?	Yes
5	What relief and order ?	As per final order

5. The Trial Court, considering the evidence on record dismissed the suit. Hence, the Plaintiff preferred civil appeal NO.2/2004 in the court

of District Judge – 1 at Malshiras. That appeal was dismissed by the Appellate Court by decree dated 26/06/2014. Hence, the Second Appeal.

6. The learned counsel for the Plaintiff submits that both the courts erred in coming to the conclusion that the Plaintiff failed to prove his case. He submits that both the courts ought to have held that the compromise deed dated 23/07/1985 filed in criminal case No.76/1985 was obtained by the Defendants committing fraud. Hence, same cannot be binding on the Plaintiff. He further submits that both the courts below failed to consider that the suit property was purchased by the Plaintiff by sale deed dated 13/09/1972 (Exhibit 32). He submits that the same was self acquired property of the Plaintiff. Hence, there was no question of claiming any share by the Defendants in the said property. He further submits that in any case, the compromise decree dated 23/07/1985 was not registered. Therefore, same is not binding on the Plaintiff. On the basis of these submissions, the learned counsel for the Plaintiff submits that though there is concurrent finding of facts recorded by the courts below, same is required to be set aside.

7. Heard the learned counsel for the Appellant Plaintiff at length. I have gone through the copy of plaint, written statement, deposition of the parties and the impugned decrees. In the present proceedings, initially the Defendant No.1, daughter-in-law of the Plaintiff filed criminal case No.76/1985 u/s. 494 of the Indian Penal Code against Defendant No.2 and the Plaintiff. In that criminal case, there was a compromise and by the said compromise the suit land was given to

Defendant No.1 towards her maintenance. The said compromise was executed on 23/07/1985. Thereafter, pursuant to the said compromise, name of Defendant No.1 was shown in revenue record 7/12 extract by way of Mutation Entry No.615. It is to be noted that the mutation entry was not challenged by the Plaintiff before Revenue Authority but he has filed the present suit. In the present proceedings the Plaintiff has not pleaded in plaint, the way in which the Defendant had committed fraud at the time of executing the compromise decree dated 23/07/1985. It seems that to come out from criminal case No.76/1985 which was filed by the Defendant No.1 under section 494 of the Indian Penal Code, the Plaintiff and Defendant No.1 executed compromise deed dated 23/07/1985 and transferred the suit property in the name of Defendant No.1. Considering these facts and as there are concurrent finding of facts recorded by the courts below, I do not find any substantial question of law involved in the Second Appeal. Hence, the Second Appeal stands rejected.

8. In view thereof, Civil Application stands dismissed as infructuous.

(K.K. TATED, J.)