

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.775 of 2011

(Babu Daryappa Hegde v. Shri Makbul Akbar Shaikh and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Vishwanath Talkute, Advocate for Appellant.

Smt. Jayshree Gite i/b Shri A.B. Tajane, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.

Dated : 28th July, 2015

1. Regular Civil Suit No.32 of 2004 was decreed by the Trial Court on 4-6-2007. The defendant No.1 was directed to deliver the possession of the suit properties to the plaintiff. It is further declared that the defendant No.1 has acquired undivided interest in the suit properties and is at liberty to file a suit for partition and separate possession. The defendant No.1 is perpetually restrained from disturbing the possession of the plaintiff and the defendant Nos.2 to 9 over the suit properties.

The Trial Court held that the Issue No.1 as to whether the plaintiff proves that he and the defendant Nos.2 to 11 are the owners of the suit properties described in Schedule A, does not survive. The Issue No.2 as to whether the plaintiff proves that he and the defendant Nos.2 to 11 were in joint possession of the suit properties, is answered in the affirmative. The plaintiff is held entitled to possession of the suit properties. The Trial Court further held that the defendant No.1 has failed to prove that he became *bona fide* purchaser for value paid without notice.

2. The lower Appellate Court has allowed Regular Civil Appeal No.207 of 2007 by its judgment and order

dated 11-8-2011. The decree passed by the Trial Court has been set aside. The lower Appellate Court has considered the admission given by the plaintiff that the suit properties were sold by the plaintiff and the defendant Nos.2 to 11 to the defendant No.1, and some properties out of these properties are acquired for the lake. It is also the finding recorded by the lower Appellate Court that the defendant No.1 had purchased the suit properties on 27-2-1977, 7-2-1980, 22-4-1982, 26-9-1982, 12-8-1993, 16-6-2000 and 16-2-2004. It is the further finding recorded that the plaintiff has admitted the execution of the sale-deeds of the co-owners and that the defendant No.1 has developed the land which he has purchased.

3. In the light of the aforesaid findings recorded by the lower Appellate Court, the learned counsel for the appellant/plaintiff has urged that the defendant No.1 has failed to place on record the sale-deeds to show his title over the suit properties. He does not dispute that the plaintiffs and the defendant Nos.2 to 11 have also not placed on record any document to show their ownership over the suit properties. The Trial Court recorded the finding that the issue of ownership over the suit properties does not survive. The lower Appellate Court has held that the plaintiff himself has admitted the execution of the sale-deeds in favour of the defendant No.1 in respect of the suit properties. Be that as it may, the plaintiff and the defendant Nos.2 to 11 have failed to establish their ownership over the suit properties by adducing any documentary evidence on record in respect of their title.

4. Thus, no substantial question of law arises in this second appeal. The second appeal is dismissed.

Judge.