

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

SECOND APPEAL NO. 694 OF 1992

Shri Chandrabai Vasant Kadam ..Appellant

Vs

1. Smt. Gangubai Dnyanu
Kanse and Ors .. Respondents

Mr. V. S. Gokhale, Advocate for Appellant.
Mr. Sugandh B. Deshmukh, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 30/03/2015

ORAL JUDGMENT:

1. Heard Mr. V.S.Gokhale, learned counsel for the appellant and Mr. Sugandh Deshmukh, learned counsel for the respondent no.1 at length.

2. By this Second Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the original defendant has challenged the judgment and decree dated 4.9.1992 passed by the learned Addl. District Judge, Sangli in Reg. Civil Appeal No.29 of 1987. By that order, the learned District Judge allowed the Appeal preferred by the respondents, hereinafter referred to as 'plaintiffs', and decreed the suit instituted by them. The learned District Judge held that the plaintiffs are entitled to recover possession of the suit property from the appellant, hereinafter

referred to as 'defendant'. The relevant and material facts, giving rise to filing of the present appeal, briefly stated, are as under.

3. The plaintiffs instituted suit for perpetual injunction and, in the alternative, for recovery of possession of house property bearing Gram Panchayat No.617, consisting of two Khans dilapidated portion and open site admeasuring 34' on eastern side, 32' on western side, 30' on southern side and 34' on northern side, situate at village Bedag in Miraj Taluka, Dist. Sangli (for short, 'suit property'). It is the case of the plaintiffs that the suit property stood in the record of Gram Panchayat in the name of Yeshwant Rama Kadam till his death. Yeshwant died issueless, leaving behind widow Yamunabai. It is the case of the plaintiff that Dnyanu Keshav Kanse, husband of plaintiff no.1 and father of plaintiffs no.2 to 5, purchased suit property from Yamunabai under registered sale deed dated 3.4.1965 (Exh.104). In pursuance thereof, he was put in possession of the suit property. Dnyanu died on 4.6.1970 leaving behind the plaintiffs. The plaintiffs are residing in Sangli. Plaintiff no.1 manages the suit property by visiting village Bedag once in a week. On 5.3.1977, the defendant made an attempt to erect a shed in the suit property. The plaintiffs apprehended that they would be

dispossessed by the defendant with the help of villagers. The plaintiffs, therefore, instituted suit for perpetual injunction and alternatively for recovery of possession of the suit property in the event of the Court coming to the conclusion that they are not in possession.

4. The defendant resisted the suit by filing written statement (Exh.20). She disputed the description of the suit property. She came with the case that the suit property was joint family property of Yeshwant and his brother Vasant. Each one had $\frac{1}{2}$ share in the suit property. Yeshwant was elder brother and, therefore, the suit property was recorded in his name. The defendant contended that after demise of Yashwant and Vasant, the original Khata of the house property was separated as Gram Panchayats No.617 and 618. The half portion on the northern side was allotted Gram Panchayat no.618. It was recorded in the name of the defendant. She obtained permission of the Gram Panchayat and constructed House. The house property of Yamunabai bears Gram Panchayat no.617 and it is only an open site of southern side. Dnyanu obtained sale deed by playing fraud on Yamunabai. The defendant, therefore, prayed for dismissal of the suit.

5. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. The parties led oral and

documentary evidence. After considering the material on record, the learned trial Judge dismissed the suit on 3.5.1986. Aggrieved by that decision, the plaintiffs preferred Appeal which was allowed. It is against this decision, the original defendant has instituted the present Second Appeal.

6. On 22.11.1992, Appeal was admitted as grounds no.1 to 3 raised substantial questions of law. Grounds no. 1 to 3 read as under :

1. Whether the plaintiffs could claim title to the suit house property on the basis of the sale deed dated 3rd April, 1965 at Exhibit-104?
2. Whether the lower Appellate Court was justified in assuming that the two parts of the house property were recorded as Gram Panchayat Nos 618 and 618 and that both these house numbers were covered by the sale deed Exhibit-104?
3. Whether Yamunabai was competent to sell the suit house property along with her house property treating both the properties as one house property under the sale deed Exhibit-104 and whether the title of Yamunabai could be based solely on the admission of Chandrabai that the entire house property was purchased by Yeshwant?

7. In support of this Appeal, Mr. Gokhale reiterated the submissions that were advanced before the Courts below. He submitted that the learned District Judge committed serious error in decreeing the suit. The suit property is a joint family property of Yeshwant and Vasant. Yeshwant being elder, the

suit property was entered in his name. He also invited my attention to the sale deed dated 3.4.1965 (Exh.104). He submitted that defendant-Chandrabai is widow of younger brother Vasant. Vasant had half share in the suit property. Gram Panchayat No.618 was in possession of the defendant and Yamunabai was in possession of Gram Panchayat No.617. The sale deed obtained by Dnyanu on 3.4.1965 was bogus and was obtained by playing fraud on Chandrabai. He submitted that Yamunabai was not competent to sell the suit property by treating both the properties as one house property.

8. On the other hand, Mr. Deshmukh supported the impugned order. He submitted that the learned District Judge, after considering the evidence, held that Yeshwant was working as a teacher. Vasant was working as Labourer. They had no ancestral property. The learned District Judge also held that there was no iota of evidence to show that the suit property was purchased by utilizing the joint funds of Yeashwant and Vasant. In short, he submitted that there was no joint family nucleus from which the suit property could have been purchased. Vasant also never tried to assert his ownership during the life time of Yeshwant. He, therefore, submitted that the Appeal deserves to be dismissed.

9. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. The short question that falls for consideration in this Appeal is whether the suit property was exclusively owned by Yeshwant and consequently his widow Yamunabai was competent to execute sale deed in favour of Dnyanu on 3.4.1965. In paragraph 11, the learned District Judge considered the evidence on record and observed that Yeshwant was working as a school teacher. On the other hand, his younger brother Vasant was only a labourer. Both brothers had no ancestral property. They came to village Bedag for earning their livelihood from village Hallyal. There was no joint family nucleus with these brothers. Vasant never tried to assert his ownership during life time of Yeshwant. There was no iota of evidence to show that the purchase of house property was made by utilizing joint funds of Yeshwant and Vasant. The learned District Judge, after considering the evidence on record, ultimately held that the defendant has no right or concern with the suit property.

10. In paragraph 12, the learned District Judge also considered the plea of fraud in obtaining sale deed from Yamunabai. The learned District Judge observed that there was no iota of evidence about fraud allegedly played by

Dnyanu on Yamunabai.

11. With the assistance of the learned counsel appearing for the parties, I have perused the evidence on record. On behalf of the plaintiffs, his widow Gangubai was examined as PW 1 at Exhibit-89. She deposed that she was present at the time of Yamunabai executing the sale deed. The sale deed bears thumb impression of Yamunbai. Yamunbai put her thumb impression in her presence. After execution of the sale deed, Dnyanu was put in possession. Name of Dnyanu was entered to the suit property in the Gram Panchaya record. She has produced Gram Panchayat entries. Her husband Dnyanu was paying assessment of the house property and presently she is paying taxes. The plaintiff also examined Bond-Writer Ramesh Ghorpade as P. W. 2 (Exh.95). After perusing the evidence adduced by the plaintiffs, I am satisfied that they have proved the sale deed.

12. On behalf of the defendant, Chandrabai was examined as DW 1 (Exh.116). She admitted that Yeshwant was working as Teacher at Bedag and that Vasant was doing labour work. She further admitted that the suit property was owned by one Mane and Yeshwant had purchased the suit property from Mane. In the cross examination, she feigned ignorance while deposing that she did not know whether Vasant's name

was never entered to the record of the suit property. She further admitted that Yamunabai used to give her money for paying taxes of house property. After considering the evidence on record, I do not find that the learned District Judge committed any error in allowing the Appeal, thereby, setting aside the trial Court's decree and decreeing the suit. In my opinion, the learned District Judge has correctly appreciated the evidence on record. For the reasons stated in the impugned order and in particular paragraph 11 thereof, I do not find that the learned District Judge committed any error. The points formulated at the time of admitting the Appeal are answered accordingly. The Appeal fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

(R.G.Ketkar,J.)