

Bayyama C. Manjulkar and others	...	Appellants
Vs.		
Deepak Varma	...	Respondent

Mr. Subhash V. Gutte for Appellants.
Mr. Mandar Limaye for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 18, 2015

P.C. :

Heard Mr. Gutte, learned Counsel for appellants and Mr. Limaye, learned Counsel for respondent.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendants have challenged the judgment and decree dated 16.11.2011 passed by the learned Civil Judge, Senior Division, Pune in Special Civil Suit No.2216 of 2011 as also the judgment and decree dated 13.12.2013 passed by the learned District Judge-4, Pune in Regular Civil Appeal No.38 of 2012. By these orders, the Courts below partly decreed the Suit instituted by the respondent, hereinafter referred to as the plaintiff. The Courts below held that plaintiff is entitled to registration of the sale deed dated 22.12.2003 and the power of attorney dated 22.12.2003 on payment of the requisite stamp duty and penalty as per law. The defendants are restrained permanently from dispossessing the plaintiff without due process of law.

3. In support of this Appeal, Mr. Gutte submitted that the learned trial Judge partly decreed the Suit in terms of prayer clauses (h) and (i) of the

Suit and held that the plaintiff is entitled to registration of the sale deed and power of attorney, both dated 22.12.2003 on payment of requisite stamp duty and penalty as per the law. The learned trial Judge decreed the Suit on 16.11.2011 and the Appeal preferred by the appellant was dismissed on 13.12.2013. He submitted that having regard to the provisions of the Registration Act, 1908 and in particular provisions contained in Chapter IV thereof, no document other than a Will is to be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution and further subject to payment of penalty after following due procedure of law for a period of four months. In any case, the Courts below were not justified in 2011 in directing registration of these documents executed in the year 2003. Mr. Gutte also relied upon the decision of Allahabad High Court in the case of *Vijay Kumar Sharma Vs. Devesh Behari Saxena*, **AIR 2008 All 66**.

4. On the other hand, Mr. Limaye submitted that it was defendants' case that during the relevant time, there was ban for registration of the instruments. He submitted that the Courts below were justified in directing registration of the sale deed and power of attorney, both dated 22.12.2003 in the year 2011 as there was ban during that period. In any case, he submitted that the impugned orders may be set aside by consent of the parties and without recording reasons.

5. In view of these submissions, following substantial question of law arises in this Appeal:

“Whether the Courts below were justified in holding that the plaintiff is entitled to registration of sale deed and power of attorney, both dated 22.12.2003 in the light of the provisions of Registration Act, 1908, and in particular provisions contained in Chapter IV thereof, while passing the impugned judgments?”

6. By consent of the parties, Second Appeal is taken up for final hearing without sending the notice to lower Court as contemplated under Order 41, Rule 11 C.P.C. By consent of the parties Appeal is allowed in the following terms:

- a. The judgment and decree dated 16.11.2011 passed by the learned Civil Judge, Senior Division, Pune in Special Civil Suit No.2216 of 2011 as also the judgment and decree dated 13.12.2013 passed by the learned District Judge-4, Pune in Regular Civil Appeal No.38 of 2012 are quashed and set aside. The Suit is restored to the file of the trial Court;
- b. It is made clear that I have not examined the merits of the case. All the contentions of the parties on merits are expressly kept open;
- c. Liberty is reserved to the parties to take out appropriate applications for interim relief.

7. In view of the disposal of the Appeal, nothing survives in Civil Application No.570 of 2014 and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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