

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

SECOND APPEAL NO.472/2015
WITH
CIVIL APPLICATION NO.1005/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. A. Sawant i/b. Ketan Joshi for the Appellant

CORAM : K. K. TATED, J.

DATE : SEPTEMBER 22, 2015

P.C.:

1. Heard. This appeal is preferred by the Plaintiff challenging the concurrent findings of facts recorded by the courts below.

2. The Appellant is original Plaintiff. The Plaintiff had filed a suit for cancellation of sale deed dated 21/03/1995 executed in the name of Defendant Nos.1 and 2 by the Plaintiff's father Chintaman. Chintaman and his three brothers Baburao @ Mahadeo, Anantrao and Vinayak had purchased the land bearing Gut No.2269 by sale deed dated 29/04/1955. Thereafter the same was divided in 4 brothers. The father of the Plaintiff sold the suit property to Defendant Nos.1 and 2 by sale deed dated 21/03/1995 (Exhibit-58). The

father of the Plaintiff viz. Chantaman died on 05/02/1997.

3. Thereafter the Plaintiff filed Special Civil Suit No. 887/1997 on 29/04/1997 for cancellation of sale deed dated 21/03/1995. Both the courts below held that the suit property was self acquired property of the Plaintiff's father Chintaman and dismissed the Plaintiff's case. Hence, the Second Appeal.

4. The learned counsel for the Plaintiff submits that both the courts below erred in coming to the conclusion that the suit property was self acquired property of their father Chintaman and not a joint family property. He submits that though the suit property was purchased in the year 1955, same was partitioned amongst 4 brothers in the year 1970. Hence, the Plaintiff has right in their father's property. In support of this contention, the learned counsel for the Plaintiff relies on the judgments of the Apex Court in the matter of *Sheela Devi and Ors. Vs. Lal Chand and Anr. (2006) 8 SCC 581* and *M. Yogendra and Ors. Vs. Leelamma N. & Ors. (2009) 15 SCC 184*.

5. On the basis of this submission, the learned counsel for the Appellant - Plaintiff submits that the judgments and decree passed by the courts below required to be set aside.

6. Heard the learned counsel for the Plaintiff at length. I have also gone through the copy of the plaint, written statement and deposition of the parties placed on record. Admittedly, in the present proceedings, father of the Plaintiff, along with his three brothers purchased the suit land bearing gut No.2269 on 29/04/1955. Thereafter same was partitioned amongst 4 brothers. Hence, that cannot be treated to be HUF property. These facts are considered by both the courts below. These being, concurrent findings of facts recorded by the courts below, in view of the Apex Court judgment in the matter of ***Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95***, I do not find any reason to entertain the Second Appeal.

7. The authorities cited by the learned counsel for the Plaintiff are altogether different. Same are not applicable in the facts and circumstances of the present case. In these authorities, the suit property was HUF property and this is not the case in hand.

8. Considering the submissions made by the learned counsel for the Plaintiff and the law laid down by the Apex Court, following order is passed:

- a. Second Appeal stands dismissed.
- b. Consequently, the Civil Application stands dismissed as infructuous.

JUDGE

CERTIFICATE

Certified to be true and correct copy of the original
signed order.