

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 288 OF 2013

Smt. Mirabai Ramasare Pardeshi,
Since deceased through L.Rs.

1. Shri Ramasare Ramdulare Pardeshi
(Bharadwaj)
age 65 years, Occ. Business,
2. Shri Somnath Ramasare Bharadwaj,
age 34 years, Occ. Business,
3. Shri Santosh Ramasare Bharadwaj,
age 28 years, Occ. Service,
4. Shri Pawan Ramasare Bharadwaj,
age 25 years, Occ. Service,

All 1 to 4 residing at 604,
Brahmanand Society "A" Wing,
Chikanghar Highway, Kalyan (W)

5. Smt. Saroj Devendra Koyande,
age 38 years, Occ. Household,
R/at Plot No. 18, Flat No. 1-E,
'B' Wing, Hill View Co.Op Society,
Central Park, Nallasopara (E),
District : Thane,
6. Smt. Radha Shaymsunder Bharadwaj,
age 36 years, Occ. Household,
R/at Room No. 340, Galli No. 2,
Karbala, Firojabad-283203
Uttarpradesh ..

**APPELLANTS/
Org. Plaintiffs**

.. **Versus** ..

1. Ramkali Rambharose Katiar,
since deceased through LRS
- 1a. Shri Rameshchandra Rambharose
Katiar, age Adult, Occ. Service,

R/at Tikaram Building, Ram Baug
Lane No. 5, Kalyan (W), Thane,

- 1b. Shri Radheshhyam Rambharose Katiar,
Adult, Occ. Business,
R/at Bagare Niwas, Ram Baug
Lane No.2, Kalyan (W),
District Thane,
- 1c. Shri Vishnu Rambharose Katiar,
Adult, Occ. Business,
R/at Narayan Peth, Zunjarrao Chawl,
Kalyan (W), Distt. Thane.
- 1d. Smt. Prema Dayashankar Katiar,
Adult, Occ. Household,
R/at Fattegarh, State Uttar Pradesh
- 2. Shri Ramesh Rambharose Katiar,
- 3. Shri Radheshyam Rambharose Katiar,
- 4. Shri Vishnu Rambharose Katiar..

RESPONDENTS

...

Mr. Tejas D. Deshmukh, Advocate, with Shri Samrat K. Shinde,
Advocate, for appellants.

Mr. A.S.Khandeparkar, Advocate, with Shri Amogh Karandikar,
Advocate, for Respondent

CORAM : R.K.Deshpande, J.

DATED : 11th JUNE, 2015.

ORAL JUDGMENT

Special Civil Suit No. 1853 of 1996 filed by the
appellant-plaintiff for declaration that she has become owner
of the suit property on the basis of the registered sale deed
dated 28.04.1972 and for possession of the suit property was

dismissed by the trial Court by its judgment and order dated 04.01.2010. Civil Appeal No. 83 of 2010 preferred by the plaintiff was also dismissed by the lower Appellate Court on 15.10.2012. The plaintiff is, therefore, before this Court as appellant against the concurrent findings of fact.

2] The question before the courts below was whether the appellant has established her title over the suit property on the basis of registered sale deed dated 28.04.1972 at Exh. 51. Undisputedly, it was executed by the owner of the property, one Ghanshyam Zunzarrao. The respondents are the defendants in the said suit and raised the defence that in terms of decision of this Court in Second Appeal No. 66 of 1978, decided on 06.08.1984, they have deposited an amount of Rs.4,000/- towards the sale consideration said to have been paid by the plaintiff to the original owner Ghanshyam Zunzarrao. The defence of ownership was, therefore, raised on the basis of the decision of this Court.

3] The facts in the background are as under-

Rambharose Katiar and Ramdulare Katiar were two real brothers. The appellant in the present case Smt. Mirabai

Ramasare Pardeshi is the daughter-in-law of Ramdulare. The respondent No.1 Smt. Ramkali Rambharose Katiar is the wife of Rambharose, the younger brother. The respondents claimed to be tenants of the original landlord Shri Ghanshyam Zunzarrao and alleged that Ramdulare – the father-in-law of the appellant was inducted in the suit premises, which is Room No. 31 as her agent or trustee. According to the respondents, the husband of the appellant and her father-in-law started asserting the right as tenants in respect of the suit property. As a result, Regular Civil Suit No. 190 of 1969 was filed by the respondent Smt. Ramkali Rambharose Katiar. In the said civil suit, the husband of the present appellant and her father-in-law were joined as defendants, but the present appellant Smt. Mirabai was not a party to the said suit. The dispute involved in the said case was regarding status of the plaintiff and the defendants therein in the suit property as tenant. The ultimate adjudication has reached the finality in Second Appeal No. 66 of 1978, decided on 06.08.1984. As per this adjudication, the husband of the present appellant and her father-in-law were occupying the suit premises as constructive trustees of the respondent No.1 Smt. Ramkali.

4] During the pendency of the Regular Civil Suit No. 190

of 1969, out of which Second Appeal No. 66 of 1978 arose, the original owner Ghanshyam executed sale deed dated 28.04.1972 at Exh. 55 in favour of the present appellant Smt.Mirabai for total consideration of Rs.4000/-. This fact was brought to the notice of this Court for the first time when the Second Appeal No. 66 of 1978 was decided on 06.08.1984. This Court held that the respondent No.1 - Smt. Ramkali, who was plaintiff in the said suit, established her tenancy in respect of the suit premises and no evidence was brought on record to establish that the tenancy in respect of the suit property was transferred by the landlord Ghanshyam in the name of the defendants in the said suit who were the husband of the appellant and her father-in-law at any prior time. The Court has held that the defendants in the said suit succeeded to purchase the suit property on the basis of tenancy rights from the owner. The Court, therefore, directed the defendants in the said suit to deliver the possession of the suit premises to the respondent no.1 upon refund of Rs.4000/- of the consideration paid by the defendants in the said suit to the owner. Consequently, the decree was executed and the possession was taken on 22.08.1986 by the respondent No.1 herein and since then she is in possession of the suit property.

5] The appellant herein filed the present suit i.e. Special Civil Suit No. 1853 of 1996 on 07.12.1984 claiming a declaration of ownership on the basis of the sale deed dated 28.04.1972 and for possession of the suit property which is Room No. 31 against the respondents. As pointed out earlier, the respondents defended the suit by filing written statement taking a plea that on the basis of the decision of the court in Second Appeal No. 66 of 1978, decided on 06.08.1984, the respondent No.1 has deposited the total consideration in the Court and has become owner of the property. The respondents denied their relationship as a landlord and tenant with the appellant. It is the defence taken that in response to the decision of this Court, the respondent No.1 was put in possession of the property and on the basis of the observations made by this Court in the aforesaid decision, the appellant is not entitled to any relief.

6] The learned counsel for the respondents has urged that sale deed dated 28.04.1972 though marked as Exh. 51, it has not been proved. The courts below have given various reasons to disbelieve such sale deed and the respondents having paid the amount of consideration in terms of the decision of this Court, have become absolute owners of the

suit property. This Court has framed the substantial questions of law on 12.11.2013, as under.

(I) Whether the learned District Court was right in law in holding that even though the registered sale deed is in the name of the appellant the actual purchases of the suit property are defendants in lieu of the appellant?

(ii) Whether the courts below were right in law to dismiss the suit filed by the appellant after giving a finding that the registered sale deed has been proved by the appellant?

7] It is not possible to accept the contention of the learned counsel for the respondent that the courts below have not recorded the finding that the sale deed dated 28.04.1972 at Exh.51 has not been proved. In para 18 of the Appellate Courts judgment a categorical finding is record that, “the sale deed at Exh. 51 has been duly proved by PW-1 Advocate Sabnis”. This witness has identified the executant, who is the owner of the property, before the Sub Registrar. I have gone through the recitals of the sale deed. It is registered on 28th April, 1972. By this sale deed, the property is transferred for total consideration of Rs.4000/- in the name of the appellant Smt. Mirabai. The property is not transferred either in the name of the husband of Smt. Mirabai or in the name of father-in-law of Smt. Mirabai. Once it is held that the document was duly executed and proved, the contents of it have to be read as true and correct. The appellant has established her

ownership on the basis of this registered sale deed dated 28.04.1972 at Exh. 51.

8] Coming to the decision of this Court delivered on 06.08.1984 in Second Appeal No. 66 of 1978, no doubt that the finding is recorded that the defendants in the said suit succeeded in purchasing the suit property from the original owner on the basis of the tenancy. The present appellant was not the party to the said suit. She purchased the property by registered sale deed dated 28.04.1972 at Exh. 55 during the pendency of the suit. It was not a suit based upon the title, but *inter se* dispute between the plaintiff and the defendants in the Regular Civil Suit No. 190/1969 regarding their status as tenants of the original landlord Ghanshyam Zunzarrao, who was also not party to the said suit. It was not a case where the owner of the suit property came before the Court saying that the sale deed dated 28.04.1972 was obtained from him by practicing fraud. In such a situation, the findings recorded in the said judgment would not operate as *res judicata* against the present appellant in respect of her title over the suit property.

9] The learned counsel for the respondent has urged

relying upon the provisions of Sections 13, 14, and 15 of the Indian Trust Act, 1882, that the appellant-plaintiff has been occupying the suit premises in the capacity of a constructive trustee of the respondents. It is also urged that appellant was duty bound to take such steps as are reasonably required for preservation of the trust property and protection of the title of the respondents thereon. It is also urged that the appellant was not expected to set up any title over the suit property adverse to the interest of the respondents.

10] With the assistance of the learned counsel for the respondents-defendants, I have gone through the written statement. The learned counsel was specifically asked to point out the aforesaid stand taken in the written statement. He fairly conceded that such a stand is not found in the written statement. He relies upon the finding recorded by this Court in Second Appeal NO. 66 of 1978 to the effect that the husband of the appellant and her father-in-law were occupying the suit premises in the capacity of constructive trustees of the respondents. In view of the findings recorded in the earlier paragraph, the appellant in the present case was not bound by the findings recorded in the second appeal. Be that as it may, it is not the pleading and proof in the present case that

the appellant was acting as constructive trustee of the respondents in occupation of the suit property. It is not the averment that the appellant has committed the breach of trust and violated the provisions of Section 14 of the Indian Trust Act. Though the respondents-defendants claims to have deposited an amount of Rs.4,000/- in terms of the decision in Second Appeal, the appellant states that she has not withdrawn any such amount. There is neither any pleading nor evidence on record to show that the actual purchase of the suit property was by the husband of the appellant or her father-in-law. It is not the case of the respondents that the appellant was provided funds by her husband or father-in-law, who were the defendants in Regular Civil Suit No. 190 of 1969. The courts below have, therefore, committed an error of law in dismissing the suit in spite of recording the finding that the registered sale deed at Exh.55 has been proved. The substantial questions of law are, therefore, answered accordingly.

11] In the result, the second appeal is allowed and the following order is passed.

The appellant is declared to be the owner of the suit

property i.e. Room No. 31. The decree is passed accordingly.
No order as to costs.

12] At this stage, the learned counsel for the respondent prays for stay of the effect, operation and implementation of this decision for a period of 12 weeks from today.

13] Undisputedly, the respondent is in possession of the suit property. This court has not passed any decree for possession and therefore, I do not find any reason to stay the effect and operation of this judgment. The prayer is rejected.

(R.K.Deshpande, J.)

Rvjalit/P.A.