

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

**SECOND APPEAL NO.428 OF 2011
ALONGWITH
CIVIL APPLICATION NO. 1062 OF 2011**

Nabilal Mohiddin Mujawar
since deceased through L Rs.
Gulshanbi Nabilal Mujawar & Ors.

.. Appellants.
(Org.Defendant
No.1 to 4 and
6 & 7)

V/s

Sileman Chand Mujawar & Ors.

.. Respondents.
(Org.Plaintiffs
and Defendant
No.5, 8 & 9)

Mr. D.W. Bhosale, for the Appellants.
Mr. Akshay P. Shinde i/by A.M. Kulkarni, for the Respondents.

**CORAM : RAVI K. DESHPANDE, J.
DATED : 14th JULY, 2015**

P.C.

1. Regular Civil Suit No.306 of 1982 for partition was dismissed by the Trial Court on 19th August, 1998. Regular Civil Appeal No.879 of 1999 has been allowed by the Lower Appellate Court and the plaintiffs are held entitled to the half share in the suit property. The

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original defendants are before this Court in this Second Appeal.

2. The property was owned by one Dada Mujawar, who had two sons Chand and Mohiddin the real brothers. The plaintiffs are the successors of Chand, whereas the defendants are the successors of Mohiddin. Chand died in year 1966, whereas Mohiddin died in the year 1979. Upon the death of Dada, Chand and Mohiddin are entitled to succeed to his estate. Reliance was placed upon Exhibits 90 and 91, which are sale deed executed by Chand in respect of his share in favour of Mohiddin, which are unregistered documents, to urge that Mohiddin became the exclusive owner of the property.
3. Taking into consideration the provision of Section 54 of the Transfer of Property Act, the Lower Appellate Court held that the property was of the value of less than Rs.100/- and transfer was not required to be compulsorily registered. However, on the aspect of possession, the finding is recorded that the defendants have failed to establish that the possession was handed over to Mohiddin. The finding of the Lower Appellate

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Court is that at the time of execution of these two documents at Exhibits 90 and 91, the possession was with one Abdul Mullani, in whose favour assignment deed at Exhibit 89 was executed. The another document taken into consideration by the Lower Appellate Court is the deed of re-conveyance executed by Mohiddin in favour of the plaintiff No.1 Sileman in the year 1972. It is certified copy of the registered document placed on record alongwith the Index II. It is held on basis of this document that the property was re-conveyed to the plaintiff by Mohiddin.

4. The learned counsel for the appellants has urged that the certified copy of the re-conveyance deed was not admissible in evidence in the absence of any permission to lead the secondary evidence sought by the plaintiffs. He further submit that possession was actually delivered to Mohiddin at the time of execution of the sale deeds Exhibits 90 and 91. He further submit that there are other properties which are the joint family properties and in the absence of these properties, the suit for partition and separate possession, was not maintainable.

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5. Section 54 of the Transfer of Property Act, allows the transfer of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. The finding of the Lower Appellate Court is that the possession was not delivered. The finding is based on evidence available on record and hence, it cannot be said that there was transfer of property effected by Exhibits 90 and 91, which are unregistered sale deeds. Once, it is proved that there was no transfer of the property by way of Exhibits 90 and 91, the question of admissibility of the certified copy of re-conveyance deed executed by Mohiddin in favour of the plaintiff No.1 loses its significance. The parties are governed by Mohammedan Law in which the concept of joint family property is not available. If there are other properties, in which the parties have shares, they are at liberty to agitate the same and it is not necessary for this Court to entertain such an application under Section 41 Rule 27 of the Civil Procedure Code. Therefore, no substantial question arises for the consideration of this Court. The Second Appeal is dismissed.

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6. In view of dismissal of the Second Appeal, the Civil Application No.1062 of 2011, disposed off as does not survive.

(RAVI K. DESHPANDE, J.)