

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

SECOND APPEAL NO.725 OF 2012

Mr. Hussain Mastan Shaikh
since deceased
Through Legal Heir Salim Hussain
Shaikh,
Since deceased through Legal heirs

1. Ajbal w/o. Late Salim Shaikh
Age 40 years, occ. Housewife
Residing at 74/585, Maharashi
Nagar, Pune-411 037.
2. Master Fardeen Salim Shaikh
Through mother & natural
Guardian
Abjal Salim Shaikh
Age 12 years, occ:
Residing at 74/585, Maharshi
Nagar, Pune-411 037.

.. Appellants.

V/s

1. Mr. Rashid Hussain Shaikh
Age : 47 years, Occ. Service,
Residing at : 74/585, Maharshi Nagar
Pune-411 037.
2. The Estate Manager,
Maharashtra Housing and Area
Development Board, a Board
Constituted under the provisions of
Maharashtra Area and Development
Act, 1976, having its office at :
Agarkar Nagar, Near Alankar Talkies,

Pune-411 001.

.. Respondents.
(Org.Respondents)

Mr. VM. Bhate, for Appellants.

Mr. Kuldeep U. Nikam, for Respondent No.1.

Mr. PG. Lad a/w Mr. Aniketh Poojary, for Respondent No.2.

Coram : Smt. R.P SondurBaldota, J.

Date : 10th April, 2015

P.C.

1. This Second Appeal challenges the concurrent findings by the Courts below on the issues as regards the bar of limitation and the title to the suit property raised in Regular Civil Suit No.793 of 2004. The appellants are the heirs and legal representatives of the original plaintiff and respondents are the original defendants. Parties shall hereinafter referred to by their original nomenclature.

2. The plaintiff had filed Regular Civil Suit No.793 of 2004 against his son, respondent No.1 and The Estate Manager, Maharashtra Housing and Area Development Board (MHADAB) for declaration inter alia that defendant No.1 and the plaintiff's another son Salim are the owners of the suit property in view of Tharao-patra dated 08th February, 2005 and permanent injunction to restrain defendant No.1 from creating third party interests in the suit

property.

3. The case of the plaintiff was that he was the allottee of MHADAB of Room No.585, Chawl No.74, Maharshinagar, Pune. The premises allotted to him consist of two rooms admeasuring 10' x 12' each. He had later constructed a hall and kitchen admeasuring 9' x 12' adjoining to the premises allotted. He had been residing there alongwith his family consisting of his wife, two sons and the families of his sons. On account of domestic quarrels, the plaintiff started residing in the two rooms separately and had given one of the rooms i.e. the kitchen to the defendant No.1 for his residence. But defendant No.1 constructed two more rooms adjoining to the room in his occupation and had let out the same to a third party. In the year 1999-2000, the plaintiff desired defendant No.2 to transfer the suit property in the name of his elder son Salim and had asked defendant No.1 to do the needful i.e. to complete formalities with Respondent No. 2 MHADB. Defendant No.1 then obtained signatures of the plaintiff on some printed forms and some other documents and got the premises transferred to his own name. Thereafter, he started harassing the plaintiff and his family members. The plaintiff learnt about the transfer of the premises in the name of defendant No.1 for

the first time in the month of March, 2004, after which he filed Regular Civil Suit No.793 of 2004.

4. Defendant No.1 contested the suit denying all the allegations. According to defendant No.1, true facts of the case are that he and his family alongwith the plaintiff, have been residing in the Central room of the suit property and he has been looking after the plaintiff. The brother of defendant No.1, Salim and his family have been illegally residing in the front room of the suit property. Since, defendant No.1 and his wife have been looking after the plaintiff, on 11th August, 2000, the plaintiff executed a declaration for transfer of the premises in the name of defendant No.1. On the basis of that declaration, defendant No.1 had obtained the necessary forms for transfer of the premises. These forms have been signed by the plaintiff on 20th November, 2000 in the presence of Notary Public. On the same day, he also issued No Objection Certificate for transfer of the premises to the name of defendant No.1. Thereafter, the premises came to be transferred by defendant No.2 in the name of defendant No.1. He further alleges that the suit has been filed by the plaintiff at the instigation of Salim, who had sent advocate's notice to defendant No.2. In the notice, Salim had raised an objection to

transfer of the premises to the name of defendant No.1. His objection was considered by defendant No.2 before effecting transfer of the premises to the name of defendant No.1.

5. The plaintiff had amended the plaint to claim therein that during pendency of the suit, on 05th February, 2005, the plaintiff, defendant No.1 and Salim executed a Tharao-patra under which it was agreed that the suit property would be transferred to the joint names of Salim and defendant No.1. In his additional written statement, defendant No.1 denied executing any Tharao-patra.

6. Defendant No.2, the Estate Manager of MHADB did not file written statement to contest the suit. But officers of MHADB produced documents concerning the suit property and its transfer.

7. The Trial court on appreciation of the evidence before it, held that plaintiff had failed to establish that defendant No.1 had practiced fraud and to get the premises transferred to his name. The plaintiff also failed to establish that he learnt about the transfer for first time in March, 2003 and hence the suit was barred by the law of limitation. While answering the additional issue, the Trial Court held that the plaintiff had failed to prove that defendant No.1 and plaintiff's elder son are the owners of the suit property.

8. One of the witnesses examined by the plaintiff was P.W. 5, a person working in the Office of MHADB, Pune since the year 1996. He produced original documents in respect of the suit property. He described the procedure for transfer of the property belonging to the MHADB. His evidence shows that MHADB maintains a Register relating to transfer and regularisation of the premises owned by it. If the transferee is a relative entry for regularisation is recorded in the concerned Register and if the premises are sold, an entry into the transfer register is taken. Further in addition to the application in the prescribed formats for transferring the premises, affidavits of the concerned parties, duly notarised, are obtained. Thereafter, inspection of the premises is taken in order to ascertain the occupant. The plaintiff had not purchased the premises from MHADB. He had been allotted the same as a flood affected person. The wife, son and daughter-in-law of the plaintiff had taken objection to the transfer of the premises to defendant No.1. Since the premises were allotted to the plaintiff individually, the objection was rejected. It is his further evidence that the plaintiff had filed an application for transferring the prescribed format and also issued NOC which was duly notarised. The Estate

Manager had called the plaintiff to the office, obtained his signature and thereafter issued NOC to him for transfer. As per the rules of MHADB allottee can during his lifetime transfer the premises to any person and the family members of the allottee cannot object to the transfer.

9. P.W. 4, another officer of the defendant No. 2 deposed that he had inspected the suit premises and noted down the names of the occupants at the suit property, noted the ration card issued at the address of the suit property and had recorded the objection of wife of the plaintiff and wife of Salim.

10. On the basis of the above evidence, the Courts below opined that there was independent evidence available on record, which disproved the allegations of fraud and mischief made against defendant No.1. The Courts also noted that Salim had sent advocate's notice to defendant No.2 objecting to the transfer of the premises to defendant No.1 and that transfer had been effected after due consideration of all the objections.

11. Defendant No.1 examined one Jayashree Parekh P.W. 2, who deposed that on 11th August, 2000, the plaintiff had come to her for purchasing stamp paper of the denomination of Rs.20/-. She had

issued the stamp paper to him. His signature on the register maintained by the stamp vendor was produced before the Court. The Courts below then noted the document titled as a “document of declaration” dated 11th August, 2000 executed by the plaintiff. It is document indicates that for transfer of the premises in the name of the defendant No.1. As regards, the Tharao-patra, relied on by the plaintiff and disputed by defendant No.1, the Courts noted that no details of the document and its execution had been set out in the pleadings. Though, P.W. 2 examined by the plaintiff claimed that document had been executed in his present by the plaintiff and defendant No.1, he admitted in his cross examination that he was deposing at the instance of Salim, who was interested in the transfer of the premises to his name. Therefore, evidence of this witness was rightly discarded by the Courts below. In the absence of any other evidence to establish the document, the Courts below held that the document of Tharao-patra was not proved and the fact of it's execution was not established. The above evidence of the independent witnesses supports the findings of the Courts below. Their the appreciation being proper and the inference, drawn by the Courts below being possible inference, no substantial question of

law arise therefrom.

12. As regards the question of limitation, it is seen from the record that the plaintiff was well aware of the transfer at the time the same was effected. His other son Salim had sent an advocate's notice to defendant No.2 and objected to the transfer. Besides the wife of plaintiff and wife of Salim had also raised objection when an officer of the defendant No. 2 had visited the premises for the purpose of inspection. In the circumstances, the claim of the plaintiff in the plaint that he was not aware of the transfer till the month of March, 2004, was patently false and the suit filed to challenge the transfer being beyond the period of three years from the date of the transfer was barred by law of limitation.

13. In the circumstances, no substantial question of law arises for consideration of the Court. Hence, the appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)