

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.388 of 2013
(Yadavrao Anna Ghadge v. Namdev Akaram Ghadge and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri P.R. Arjunwadkar, Advocate for Appellant.
Shri Dilip Bodake, Advocate for Respondent No.3.

Coram : R.K. Deshpande, J.

Dated : 1st July, 2015

1. The Trial Court partly decreed Regular Civil Suit No.67 of 1968. The claim of the plaintiff for declaration of ownership and possession in respect of the suit properties, except Survey Nos.130/5B and 130/4B, has been dismissed on 23-12-2014. Regular Civil Appeal No.137 of 2010 has also been dismissed by the lower Appellate Court on 5-2-2013. Hence, the original plaintiff is before this Court against the concurrent findings of fact recorded by the Courts below in respect of title and possession of the suit properties, except Survey Nos.130/5B and 130/4B.

2. The suit properties originally belonged to one Anna, who died prior to coming into force of the Hindu Succession Act, 1956, leaving behind him widow Bhanubai. Bhanubai adopted

the plaintiff as her son on 9-6-1960. She executed the registered sale-deeds in the year 1961-65 in favour of the defendant Nos.2, 3 and 4. The defendant No.1 claimed to be the tenant in respect of some properties. The Courts below have held that upon death of Anna, prior to coming into force of the Hindu Succession Act in the year 1956, his widow Bhanubai succeeded to his entire estate, and by virtue of sub-section (1) of Section 14 of the Hindu Succession Act, she became absolute owner of the suit properties. She was, therefore, competent to execute the sale-deeds, and there is no evidence brought on record to establish the fraud practised upon Bhanubai while executing the sale-deeds in question. Thus, the issue of tenancy has been answered against the defendant No.1 and he is held to be the trespasser.

3. The contention of Shri Arjunwadkar, the learned counsel appearing for the appellant, is that the adoption of the plaintiff on 9-6-1960 relates back to the death of Anna in the year 1955, and the plaintiff, therefore, becomes a coparcener of the properties in the hands of Anna. He, therefore, submits that the plaintiff would have at least half share in the properties in question and thus the Courts below have committed an error in rejecting the claim of the plaintiff.

4. With the assistance of the learned counsel for the

appellant/plaintiff, I have gone through the copy of the plaint. I find that it is not the claim made in the plaint that Bhanubai was not competent to execute the sale-deeds in favour of the defendant Nos.2, 3 and 4. Had such pleadings been there, then the prayer would have been for declaration to the extent of half share in the properties in question to the plaintiff. That is also not the prayer in the suit. The sale-deeds are challenged exclusively on the ground that those were obtained by practising the fraud. It is not the case that no consideration was paid in respect of such sale of the suit properties. The Courts below have recorded the concurrent finding of fact that the case of fraud has not at all been established. After going through the copy of the plaint, I do not find that there is any specific averment that the sale-deeds were obtained by practising fraud on Bhanubai, as is required by Order VI, Rule 4 of the Civil Procedure Code.

5. The learned counsel for the appellant has urged that in view of the certificate issued under Section 24 of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947, the appellant/plaintiff has become exclusive owner of the properties at Serial Nos.1, 2, 3, 4 and 9 described in the plaint. The question as to whether the plaintiff has become the owner of the suit properties by virtue of such certificate is essentially a question of fact, which has to be pleaded and proved. After going

through the plaint, I do not find any such averment in the plaint, and the learned counsel for the appellant concedes to this fact.

6. In view of this, no substantial question of law arises in this second appeal. Consequently, the second appeal is dismissed.

Judge.

Lanjewar