

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

**SECOND APPEAL NO.580 OF 2013
WITH
CIVIL APPLICATION NO.1349 OF 2013**

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

Mr.K.B.Sanwalkar for the appellant

Mr.Mohan M. Dhamal for the respondent
nos.1, 2, 4, 5

CORAM : K.K.TATED, J.
DATED : 24/08/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Second Appeal is preferred by defendant no.1a to 1d challenging the the Judgment and Decree dated 30.3.2013 passed by learned District Judge-1, Vaduj, Dist.Satara in Regular Civil Appeal No.204 of 2010 (Old Regular Civil Appeal No.136 of 2006).
- 3 The learned counsel for the appellant original defendant no.1 submit that all the respondents are duly served. He has filed affidavit of service. Same is on record. He further submits that in the present Second Appeal, the dispute is between appellant and respondent no.2 i.e. defendant no.3 only.

Hence, at the request of both the parties, i.e. defendant no.1 and defendant no.3 matter is taken on board for final hearing at the stage of admission itself.

4 The learned counsel for the appellant submits that this court (Coram: Ravi K. Deshpande, J.) by order dated 29.6.2015 recorded that the grievance in the Second Appeal made by the appellant, the legal heirs of original defendant no.1 in respect of clause no.6 of the operative part of the appellate court decree dated 30.3.2013 which reads thus:

“Defendant No.1 Savala (1-A to 1-D) and defendant No.3 Pandurang are held to be the joint owners of property bearing Gat No.648 situated at Morochi, taluka Malshiras, district Solapur.”

5 The learned counsel for the appellant defendant no.1 submits that he agreed to purchase the suit property. He submits that in respect of the suit property the registered agreement for sale was executed on 20.3.1976 between defendant no.1 Savala Krishna Pingle and the owner of the suit property Govind Kundlik Mane. It was agreed between the parties that defendant no.1 agreed to purchase the suit property for sum of Rs.5,000/-. He submits that to that effect, the defendant no.1 gave evidence in the court below. He submits that copy of agreement for sale was not produced

either by defendant no.1 or defendant no.3 before the courts below. He submits that as per registered agreement for sale, the appellate court erred in holding that the defendant no.1 and 3 are joint owners of the suit property bearing Gat no.648 situated at Morochi, Taluka Malshiras, Dist.Solapur.

6 On the other hand, the learned counsel for defendant no.3 filed affidavit dated 1.8.2015 and place on record registered sale deed dated 1.10.1977 between defendant nos.1 and 3, Savala Krishna Pingle and Pandurang Krishna Pingle as purchaser and Govind K. Mane as seller. He submits that in view of registered sale deed dated 1.10.1977 defendant no.1 and 3, both of them are joint owners of the suit property. He further submits that the copy of registered sale deed was not placed on record before the courts below either by defendant no.1 or defendant no.3. He submits that unless and until these documents are brought on record, it cannot be held that only the defendant no.1 was the owner of the suit property.

7 After hearing both the sides for some time, both the counsel agree that in view of subsequent development i.e. placing on record registered agreement for sale dated 20.3.1976 and sale deed dated 1.10.1977, it is necessary that matter be remanded to the trial court with liberty to both the

parties to place on record additional documents and if it is necessary to allow them to examine the witnesses to that effect.

8 Considering the earlier order passed by this court on 29.6.2015, affidavit dated 1.8.2015 filed by defendant no.3 and Registered agreement for sale dated 20.3.1976 produced by defendant no.1, I am of the opinion that it is necessary that matter be remanded to the Trial Court only for deciding the issue of ownership in respect of the suit property i.e. bearing Gat No.648 situated at Morochi, taluka Malshiras, district Solapur.

9 Hence, following order is passed:

- a) Second Appeal is partly allowed.
- b) Matter is remanded to the Civil Judge, Junior Division Dahiwadi, Dist Satara for deciding the issue about ownership of the suit property i.e. “whether it is proved by the defendant no.1 that suit property bearing Gat No.648 situated at Morochi, Taluka Malshiras, Dist.Solapur is his self acquired property.”
- c) Both the parties i.e.defendant no.1(A) to 1(D) and defendant no.3 are at liberty to lead additional evidence if they so require in respect of the suit property.
- d) This court expects Trial Court to decide the matter as early as possible but within one year from the receipt of copy of order.

- e) Execution Proceedings to continue in respect of other properties except Gat no.648.
- f) In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)