

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.416 of 2012
(Ananda Patalu Patil, through Power of Attorney Holder Sanjay Ananda
Patil v. Madhukar Sambhaji Jadhav)

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

Shri S.D. Thokade for Shri D.B. Shinde, Advocate for Appellant.
Shri Bhushan Walimbe, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Dated : 30th June, 2015

1. Both the Courts have concurrently held that the challenge to the sale-deed on the ground that the same is fraudulent, has not been substantiated. The aspect of possession has been dealt with by the lower Appellate Court in para 14 of its judgment and order in Regular Civil Appeal No.46 of 2002, which is reproduced below :

“14. Thus, overall evidence brought on record has been elaborately discussed by the learned trial court in its judgment to arrive at conclusion that there is no evidence and pleading to show that the document of sale deed executed in favour of Defendant (Exh.83) is executed by playing fraud on the Plaintiff. However, the possession of the suit property was held to be with the Plaintiff by learned trial court. Obviously the defendant was staying at various places for his service purpose and the Plaintiff was taking care of the land of the Defendant bearing brother and helping him in cultivation of the land. The documentary evidence placed on record shows that since

30.4.1970 till filing of suit, suit land was in possession of the Plaintiff as per 7/12 extract produced at Exh.5, 6, 7, 36, 37 and 38. It is also pertinent to note that the name of Plaintiff was recorded in the revenue record and therefore, the revenue receipts are also in the name of Plaintiff vide Exh.67, 68. Similarly, the crop of sugarcane was cultivated in the field which was recorded in the name of Plaintiff and therefore, sugarcane was sent to sugar factory in his name and the receipt is also shown to be in the name of Plaintiff vide Exh.100 and therefore, the learned trial court held that possession of suit land is with Plaintiff, but the learned trial court has rightly held that the possession of Plaintiff is not lawful and referable to valid title. Therefore, learned trial court has rightly held that possession of Plaintiff over the suit property as on the date of suit was not referable to lawful title.”

2. In view of above, the question of fraud is essentially a question of fact. If the title over the suit property is lost, no substantial question of law arises out of the findings recorded on the aspect of the possession by the lower Appellate Court.

3. The second appeal is dismissed.

Judge.

Lanjewar