IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.1018 of 2012
(Manojkumar Krishnarao Patil v. Saraswatibai Krishnarao Patil, since deceased, through heirs and others)

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

Shri S.M. Raikar, Advocate for Appellants.
Shri Amit Borkar, Advocate for Respondent Nos.1 and 4.

Coram : R.K. Deshpande, J.
Dated : 29th July, 2015

Civil Application No.1210 of 2014 :

This is an application for addition/deletion of the parties. The application is allowed. Necessary amendment be carried out within a period of one week; failing which, the application shall stand dismissed without reference to the Court.

Civil Application (Restoration) No.184 of 2014 :

For the reasons stated in the application, the application is allowed. Second Appeal No.1018 of 2012 is restored and taken up for admission by consent of the learned counsels appearing for the parties.

Second Appeal No.1018 of 2012 :

1. Regular Civil Suit No.112 of 1981 was decreed by the Trial Court on 27-2-1986. The declaration granted was that the suit transaction dated 12-5-1960 is a *benami* transaction and the

plaintiff is the real owner of the suit property. The defendant is permanently restrained from disposing of the suit property and from making changes in it. In Regular Civil Appeal No.278 of 1986, the lower Appellate Court has reversed the decree passed by the Trial Court and the suit has been dismissed. Hence, the original plaintiff is before this Court in this second appeal.

2. The question involved before the Courts below was that whether the plaintiff has established that the sale-deed dated 12-5-1960 in the name of the defendant Saraswatibai Patil was a *benami* transaction and that he was the real owner of the suit property? Essentially, this is a question of fact. The lower Appellate Court has taken into consideration the following texts to determine the question :

(i) the source from which he purchase money came,

(ii) the nature and possession of the property after the purchase,

(iii) the motive of any for giving the transaction a benami colour,

(iv) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar,

(v) the custody of the title deeds after the sale, and

(vi) the conduct of the parties concerned in dealing with the property after the sale.

Though the Trial Court recorded the finding that the plaintiff has supplied money for purchase of the property, the lower Appellate Court has held that it is not based upon any reliable and

admissible evidence on record. The lower Appellate Court has held that the nature and possession of the property in the hands of the defendant No.1 was as the owner, and the motive was to purchase the property by way of security and maintenance of the defendant. The defendant was a concubine of the plaintiff and the title-deeds were in custody of the defendant. The lower Appellate Court has taken into consideration the conduct of the parties after the sale of the property on 12-5-1960. The Trial Court also accepted several circumstances indicating that the property in the hands of the defendant was not *benami*. The lower Appellate Court has taken a possible view of the matter, which does not give rise to any substantial question of law.

3. The second appeal stands dismissed.

Judge.

Lanjewar