

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.88 of 2010

With

Second Appeal No.89 of 2010

(Haribhai D. Kamble, since deceased, through heirs and others v. Sadashiv
B. Dhor-Deshmukh, since deceased, through heirs and others)

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

Shri D.B. Lonkar, Advocate for Appellants.

Coram : R.K. Deshpande, J.

Dated : 17th June, 2015

The Trial Court passed a decree, holding that the plaintiffs are the owners of the suit land of their respective shares as determined in Regular Civil Suit No.34 of 1981 decided on 26-5-1999. The sale-deeds dated 24-4-1971 and 1-9-1972 are held to be illegal and not binding upon the plaintiffs. Since the defendants were found in possession of the suit property, the relief of perpetual injunction was rejected. This decree passed by the Trial Court on 25-5-1999 in Regular Civil Suit No.8 of 1983 was the subject-matter of challenge in Civil Appeals No.556 of 1999 and 557 of 1999, both filed on 10-8-1999, and Civil Appeal No.601 of 1999 filed on 26-8-1999. All these civil appeals have been dismissed by the lower Appellate Court on 12-8-2009. Hence, the original defendants No.1 to 3 are before this Court in this second appeal.

The learned counsel for the appellants has raised the issues about the bar of Order II, Rule 2 of the Civil Procedure Code and the constructive *res judicata*. However, both these

issues were not raised before the Trial Court. Neither the Trial Court has framed any issue, nor the Appellate Court has addressed to such issues. The Courts below have recorded the findings of fact on merits, holding that the plaintiffs have established their ownership on the basis of the decision in Regular Civil Suit No.34 of 1981, and the sale-deeds are not binding upon the plaintiffs.

Thus, no substantial question of law arises in these second appeals. The second appeals are dismissed.

Judge.

Lanjewar