

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

SECOND APPEAL NO.204/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Nitin P. Deshpande for the Appellant

CORAM : K. K. TATED, J.

DATE : OCTOBER 16, 2015

P.C.:

1. Heard. This appeal is preferred by the Plaintiff challenging the concurrent findings of facts recorded by the courts below.

2. Few facts of the matter are, as under:

In the present proceedings the Plaintiff filed Regular Civil Suit No. 751/2003 in the court of Civil Judge, Junior Division, Pune for declaration that the Defendant No.1 Baban Rambhau Gaikwad was not the only owner of the suit property as described in paragraph 1 of the plaint. The Appellant Plaintiff also made prayer clause (b) in that suit for declaration that on the basis of the decree in civil suit No.708/1973, the court to declare that the suit properties were of HUF. The suit filed by the Plaintiff was dismissed by the Trial

Court by decree dated 30/06/2008. Hence, the Plaintiff preferred Regular Civil Appeal No. 537/2008. The Appellate Court also dismissed the appeal by decree dated 20/09/2014 holding that the Plaintiff has asked for negative declaration. In view of section 34 of the Specific Relief Act 1963, normally, the court grants positive declaration. Both the courts held that the Plaintiff had failed to prove that as per the decree passed by the civil court in civil suit No.708/1973, he has contributed any money for repurchase of the suit property.

3. The learned counsel for the Appellant submits that both the courts below erred in coming to the conclusion that the Plaintiff failed to prove that the suit properties were purchased by Defendant No.1 as per decree in civil suit No.708/1973 from HUF corpus. He further submits that the Defendant No.1 filed civil suit No.708/1973 for repurchase of the suit property from Smt. Indubai Bhagwanta Gaikwad on behalf of members of the HUF. Hence, the judgment and decree passed by the courts below required to be set aside.

4. It is to be noted that both the courts below concurrently held that the declaration sought by

the Plaintiff in the form of negative declaration cannot be granted in view of section 34 of the Specific Relief Act. Apart from that, both the courts specifically held that the Plaintiff failed to prove whether they contributed any amount at the time of repurchase of the suit property as per decree passed by the civil court in civil suit No.708/1993.

5. Considering the concurrent findings of facts recorded by the courts below and as the Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with the concurrent findings of facts, only if substantial question of law arises in the appeal.

6. I do not find any substantial question of law involved in the appeal. Hence, same is rejected.

JUDGE