

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

SECOND APPEAL NO.355 OF 2014

Smt.Shantabai Baban Kand & Ors.

.. Appellants

vs.

Smt.Shobha Ashok Abdagiri and Ors.

.. Respondents

Mr.V.H.Patole i/b Mr.S.S.Patwardhan for the appellant

Mr.Ajay A. Joshi for the respondent no.1 to 3

Mr.Ajit M. Savagave for the respondent no.4

CORAM : K.K.TATED, J.
DATED : 19/08/2015

PC:

1 Heard the learned counsel for the parties.

2 This Second Appeal is preferred by plaintiff challenging the judgment and decree dated 11.7.2006 passed by Joint Civil Judge, Senior Division Pune in Regular Civil Suit No.1207 of 1999 by which the plaintiff's suit stand dismissed and same was confirmed by the Appellate Court by decree dated 22.12.2010 in Regular Civil Appeal No.685 of 2006.

3 In the present proceeding, the plaintiff filed Regular Civil Suit No.1207 of 1999 in the court of Joint Civil Judge, Senior Division Pune

at Pune for declaration that the sale deed dated 3.12.1987 executed in favour of defendants in respect of the suit property is null and void on the ground of fraud. Both the courts below categorically held that the plaintiff herself was signatory to the sale deed along with other co-owners. Both the courts categorically held that the plaintiffs failed to prove any fraud committed by the defendants at the time of execution of sale deed dated 3.12.1987. Hence, the present Second Appeal.

4 The learned counsel for the plaintiffs submits that both the courts below erred in coming to the conclusion that plaintiffs failed to prove the fact that the defendants obtained sale deed dated 3.12.1987 by fraud. He submits that though the sale deed was executed on 3.12.1987 the same was registered in 1991. He further submits that the plaintiffs in her affidavit of evidence specifically stated that the same was not executed by her. He further submits that till today the plaintiffs are in possession of the suit property. He further submits that the defendants failed to cross-examine the plaintiffs on the point of fraud. Hence, both the courts erred in coming to the conclusion that the plaintiffs failed to prove fraud at the time of execution of the sale deed dated 3.12.1987. Hence, the judgment and decree passed by both the courts below are required to be set aside.

5 I have heard the learned counsel for the appellants plaintiffs at length. I have gone through the paper book produced by the appellant plaintiff in Regular Civil Appeal No.685 of 2006 containing the written statement, plaint, evidence, and other documents.

6 It is to be noted that in sale deed dated 3.12.1987 plaintiff was

one of the executor / signatory. Though the sale deed was executed in 1987 plaintiff filed the suit on 12.9.1999. Both the courts categorically held that plaintiff failed to show and/or make any averments in the plaint about the fraud. In any event, he has not brought on record any evidence to show that the said sale deed was obtained by the defendants by committing any fraud. There is a concurrent finding of fact of both the courts below. The Apex Court in the matter of *Belachi Dead by LR v. Pakeeran* reported in 2009 (12) SCC 95 held that High Court under section 100 of CPC can interfere with the concurrent findings of two courts only if any substantial questions of law arises for its consideration.

7 Considering the submissions made by the learned counsel for the appellant and as there is a concurrent finding of fact of both the courts, I do not find any substantial question of law involved in the present Second Appeal. Hence, Second Appeal stands rejected.

(K.K.TATED, J.)