

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda appearance, directions and	Notes, of Court's orders Registrar's orders.	Office Coram, orders or	Court's or Judge's orders.
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SECOND APPEAL NO.: 241 OF 2013
WITH
CIVIL APPLICATION NO.: 9887 OF 2015
IN
SECOND APPEAL NO.; 241 OF 2013

SHRI SHAHAJI GOPINATH BELOTE AND ANOTHER
VERSUS
SAU. SHOBHA BABAN MULAY

Advocate for Appellants : Mr. R. R. Mantri, Advocate h/f Mr. Garud N. C.

Advocate for Respondent Nos.1A and 1B: Mr. P. R. Katneshwarkar.

CORAM: T. V. NALAWADE, J.
DATED: 7th MARCH, 2016.

PER COURT:

1. The appeal is filed against judgment and decree of Regular Civil Appeal No.332 of 2010 which was pending before the District Judge No.5, Ahmednagar and also against judgment and decree of Regular Civil Suit No.90 of 1999 which was pending in the Court of Civil Judge, Junior Division, Parner. The suit filed by present Respondent Smt. Shoba for relief of injunction is decided in her favour, though the relief of declaration is refused.

Both the sides are heard.

2. The suit was filed in respect of 80 Are portion of Western side of land Gat No.564, situated at Devibhoire, Tahsil Parner, District Ahmednagar. It is the case of plaintiff Smt. Shobha that she and the mother of cousin brother of her husband viz. Anandibai Mulay had purchased the suit property under registered sale deed dated 27th February, 1991 for consideration of Rs.44,000/-. It is contended that the name of Anandibai was shown as purchaser in sale deed but Anandibai was not having money to pay the consideration and so the entire consideration was paid by plaintiff and the possession of the land purchased was also kept with plaintiff. It is contended that only after making payment of consideration by Anandibai the possession of her share was to be given by partitioning the property.

3. It is the case of plaintiff that Anandibai did not pay the part of her consideration but she created dispute and she filed Civil Suit No. 164 of 1991 for relief of injunction. It is contended that by using the litigation she tried to take the possession forcibly but she did not succeed and after her death suit came to be disposed of. It is contended that in view of the registered sale deed,

which was also in favour of Anandibai, her name was entered in the revenue record as the owner and after her death the name of her son Bhagchand came to be entered. It is contended that by misusing circumstance, like the entry in the revenue record in the name of Bhagchand he executed sale deed on 14th December, 1998 in favour of defendant of the suit. It is contended that there was no possession of any portion of aforesaid land with Bhagchand and so Bhagchand could not have given possession of the suit property to defendants. It is contended that by using the sale deed, the defendants are harassing the plaintiff and they are trying to take the possession forcibly. She had approached for relief of declaration that the sale deed is not binding on her and she had prayed for relief of injunction to protect her possession over entire portion of 80 Are land.

4. Defendant No.1 filed written statement and contested the matter. He contended that Anandibai had equal share in the property as the sale deed was executed in favour of Anandibai and plaintiff. It is his case that between plaintiff and Anandibai partition had taken place and $\frac{1}{2}$ share, situated on the Northern side was given to Anandibai. It is contended that there was a

Bandh between the two portions created by Anandibai and plaintiff. It is contended that Bhagchand sold this portion of northern side to defendant Nos.1 and 2 under registered sale deed and he gave possession also of this portion to the defendants. It is contended that the defendants have right to take water of well situated in land Gat No.565 in which plaintiff has also share and this water is used for irrigation of the share purchased from Bhagchand. They had requested for dismissal of the suit.

5. Issues were framed on the basis of aforesaid pleadings. It is not disputed that the sale deed was executed in favour of both Smt. Shobha and Anandibai and as per the registered sale deed the names of both Smt. Shobha and Anandibai were entered in the ownership column of portion of 80 Are of land Gat No.564. Plaintiff has examined herself to prove the case and her substantive evidence is as per aforesaid contentions. One copy of agreement, signed by Bhagchand, vendor of defendants is exhibited as Exhibit-32 by the trial Court in the evidence of plaintiff. Application given by Anandibai to revenue authority dated 3rd March, 1994 was also produced in support of

the case of plaintiff. Certified copy of application given by Bhagchand to revenue authority dated 1st December, 1998 is given Exhibit No.48 by the trial Court. The original sale deed executed in favour of plaintiff and Anandibai was produced by the plaintiff on record and it is at Exhibit-39. The substantive evidence and the aforesaid record show that both Anandibai and Bhagchand had approached revenue authority to inform that the entire land was with plaintiff as Anandibai had not paid the consideration. Anandibai had gone to the extent of requesting the revenue authority to delete her name from revenue record and enter the name of plaintiff in the revenue record as owner of entire portion. The revenue record shows that separate possession of Anandibai and plaintiff was not shown in respect of 40 Are portion each from the date of the sale deed. There is nothing with the defendants to show that the portion shown to be sold to defendant Nos.1 and 2 had come to the share of Anandibai. The circumstance that Anandibai had filed suit against present plaintiff and for some time relief of temporary injunction was given in favour of Anandibai cannot help the defendants as the suit was ultimately dismissed.

6. Defendant No.1 has given evidence that Bhagchand sold the Northern portion of 40 Are under registered sale deed of 1998 to defendants and on the date of the sale deed the possession was given to him. His evidence shows that he is not in a position to say as to when the portion of Anandibai was separated and was given in possession of Anandibai. Even the witness examined by the defendant like Dattatraya was not in a position to say as to whether and when the portions of Anandibai and plaintiff were separated. The other witness Suresh also could not give convincing evidence.

7. The learned counsel for the Appellant drew attention of this Court to one entry made in favour of Shahaji in crop cultivation column in the year 2007-08 and submitted that on the basis of such entry inference can be drawn that defendant No.1 had got the possession. Due to such stray entry no such inference is possible as there is a record of aforesaid nature. When exhibit number was given to the applications made by Anandibai and Bhagchand to revenue authority of aforesaid nature, it was necessary for the defendants to examine at-least Bhagchand to explain the circumstance. No such attempt was made.

8. When 80 Are portion was purchased jointly in the name of plaintiff and Anandibai it was necessary for the defendants to prove that the portions of Anandibai and plaintiff were separated and then Anandibai or her son Bhagchand was separately cultivating the portion owned by Anandibai. There is no such evidence on the record. The courts below have considered the aforesaid material and have come to the conclusion that the plaintiff has proved the possession over entire portion of the land, 80 Are portion, and the defendant failed to prove their possession. In view of these circumstances relief of injunction is given in favour of plaintiff. The findings of both the courts below are findings on facts and there are concurrent findings. In view of these circumstances, this Court holds that no substantial question of law is involved in the matter.

9. In the result, the appeal stands dismissed.

10. Learned counsel for the Appellants submitted that this Court has granted stay to the execution of judgment and decree. The decree is given by holding that the plaintiff Smt. Shobha is in possession and so there is no question of giving of any further relief of the nature of stay. The relief is refused.

11. In view of final disposal of the appeal itself, nothing further survives in the Civil Application No.9887 of 2015 filed for stay and the same stands disposed of accordingly.

(T. V. NALAWADE, J.)

Dt.07/03/2016.
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