

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 496 OF 2015
WITH
CIVIL APPLICATION NO. 11878 OF 2015

Anil Vithalrao Kolhe

....Appellant.

Versus

Sudhir Ganpatrao Rautwad
and Anr.

....Respondents.

Mr. A.N. Sabnis h/f. Mr. V.D. Gunale, Advocate for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 8th March, 2016.

ORDER :

1. The appeal is filed against judgment and decree of R.C.S. No. 85/1999, which was pending before the Civil Judge, Junior Division, Mukhed and also against the judgment and decree of Regular Civil Appeal No. 50/2004, which was pending before District Judge-1, Mukhed. The Trial Court has given decree of declaration of ownership and injunction in favour of present respondents and the said decision is confirmed by the First Appellate Court.

2. The plaintiffs are brothers *inter-se*. It is their case that they are owners of plot Nos. 28, 29, 38 and 39 which are

parts of Survey No. 134 situated at village Jamb (Bk), Tahsil Mukhed, District Nanded. They have given boundaries of these plots. It is their case that one Vasant Gaikwad was owner of these plots and from him, the father of plaintiffs had purchased these plots in their names, when they were minors, under registered sale deed dated 10.4.1985. It is their case that since then they have been in possession of the suit plots.

3. It is the case of plaintiffs that the application for entering their names in the assessment record of Local Body was made on 2.8.1999 and then application was also given to Village Panchayat by them to take permission of construction over the plots. It is contended that the Local Body did not inform anything to the plaintiffs about granting or refusing construction permission, but Local Body joined hands with the defendant and the name of defendant came to be entered in the assessment record of the Local Body.

4. It is the case of plaintiffs that some record is created by defendant falsely to show that Satyabhamabai, mother of plaintiffs has sold aforesaid plots to them. It is the case of plaintiffs that their mother was not the owner of the suit properties and so, there was no question of selling suit plots by

her to the defendant.

5. The defendant admitted that plots were purchased in the name of plaintiffs by their father when the plaintiffs were minor. It is the case of defendant that Satyabhamabai, mother of plaintiffs was acting as a guardian of plaintiffs as they were minor and she executed agreement on 14.7.1995 and under the agreement, she took amount of Rs. 30,000/- from the defendant and she gave possession to the defendant of the suit plots. It is contended by defendant that the mother of plaintiffs had agreed to return the money prior to 15.1.1996, but she did not return money and she executed one more agreement on 14.7.1995 and took more amount of Rs. 69,600/- from the defendant. It is contended that under this agreement, the mother of plaintiffs agreed to return money prior to 6.4.1998 and if the amount was not returned, the document itself was to be treated as sale deed. It is contended that the amount was not returned by the mother of plaintiffs and so, they are enjoying the property as owners.

6. Issues were framed on the basis of aforesaid pleadings. It cannot be disputed that the suit plots were purchased by plaintiffs under registered sale deed and so, under the provision of Transfer of Property Act, they had become

owners. On the other hand, the defendant cannot become owner firstly for the reason that the mother of plaintiff was not the owner and she could not have passed title to the defendant and secondly, the document which defendant want to treat as sale deed was not registered. Such document can be treated at the most as agreement and such document cannot confer rights on the defendant. It appears that initially stamp duty was also not paid in respect of value of transaction. Subsequently, stamp duty and penalty were paid, but that cannot help defendant in proving the title. The documents executed by Satyabhamabai are proved as Exhs. 115 and 116.

7. The defendants relied on one more circumstance like existence of some portion of compound wall on the suit plots. The contents of Exhs. 115 and 116 are considered by the Courts below and they show that when the documents were executed, such constructions was in existence. Thus, it cannot be said that title is passed to the defendant or defendant is in possession of the suit property. No permission was obtained by the mother of plaintiff from District Court if she was in need of money and the transfer was to be made in the interest of minors. In view of these circumstances, this Court holds that defendant did not get any right under document like Exhs. 115 and 116. There are

concurrent findings on questions of fact of the Courts below and this Court holds that no substantial question of law as such is involved in the matter.

8. In the result, appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/