

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

903 SECOND APPEAL NO. 466 OF 2015
WITH CA/8200/2012 IN SA/466/2015

MAROTI BANSI PAWAR
VERSUS
SHRIKANT CHANGANSA PAWAR AND ORS

...
Advocate for Appellant : Deshpande Amit S.
Advocate for Respondents 1 to 3 : Bagal Suraj R.
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CORAM : T.V. NALAWADE, J.
DATED : 15th June, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 48/2004, which was pending in the Court of Civil Judge, Senior Division, Basmatnagar, District Parbhani and also to challenge the judgment and decree of Regular Civil Appeal No. 59/2009, which was pending in the Court of District Judge-1, Basmatnagar. The suit filed by present appellant for relief of declaration that plaintiff is owner of 1/2 share in the suit property is dismissed by the Trial court and the decision is confirmed by the First Appellate Court. Heard both the sides.

2. Plaintiff/appellant is uncle of defendants/respondents. It is his case that in the year 1951, plaintiff was

living with Chagansa, father of defendants and they had decided to purchase the suit property. It is contended that plaintiff took loan of Rs. 100/- and he handed over the amount to Chagansa for purchasing the suit property and the property was to be purchased in the names of plaintiff and Chagansa. It is contended that after handing over money, plaintiff left the station and went to Bhivandi and settled there. He has contended that after many years he realized that Chagansa had purchased the property in his own name and the name of plaintiff was not shown in the sale deed. By making these contentions, he had prayed for aforesaid relief.

3. The defendants filed joint written statement and they denied the aforesaid contentions. They contended that the property was purchased in two parts by their father. They contended that the 2 portions were owned by 2 different persons like Maniksa and Mohammad and were purchased in the years 1951 and 1959, respectively. It is contended that the property was purchased by their father from his own income and he was doing business of clothes. The defendants contended that plaintiff was a labour, but he was not making income and he was picking up quarrels with their father and ultimately, he shifted to Bhivandi. They contended that after the death of their father,

their names were mutated in the record of rights and by pulling down the old construction, they have made new construction over the suit property.

4. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. On the basis of one document produced by plaintiff, showing that he had taken loan, Trial Court had held that plaintiff had given amount of Rs. 100/- to father of defendants for purchasing the property, but the Trial Court dismissed the suit by holding that suit was not filed within prescribed period of limitation. In the appeal filed by appellant in District Court, cross objections were filed by defendants as two issues were decided against them. The First Appellate Court has set aside the finding given by the Trial Court that appellant, plaintiff had contributed for purchasing the suit property and the appeal is dismissed.

5. This Court has carefully gone through the reasoning. It is not disputed that the two parts of the suit house were purchased under two separate sale deeds in the year 1951 and 1959 from two different persons. The so called document showing that hand loan was taken by plaintiff from one party was accepted in evidence by Trial Court only because it was 30

years old document. Even if it is presumed that some loan was taken by the plaintiff at the relevant time, inference was not possible that the said amount was handed over to father of defendants and there was agreement between father of defendants and plaintiff to purchase even some portion of suit property in the names of plaintiff and father of defendants. The plaintiff has contended that immediately after handing over money, he left the station and he settled at Bhivandi. In ordinary circumstances, if plaintiff was supplying the consideration, he would have taken care to see that the property was purchased by him as the consideration was less than Rs. 100/- of the first transaction. This did not happen. Further, the remaining portion of house was purchased by father of defendants after many years of the first transaction and it is not the case of plaintiff that he had contributed for purchasing the remaining portion also. On the basis of these circumstances, inference is drawn by the First Appellate Court that there was no agreement between plaintiff and father of defendants to purchase the suit property jointly and the property was purchased by father of defendants only.

6. There is one more circumstance like making construction of the present building on the property purchased

under the two separate sale deeds by the defendants. There is no explanation with plaintiff with regard to this circumstance. When the first sale deed was executed in the year 1951, the suit was filed in the year 2004 by the plaintiff to get the relief of partition. In view of nature of the sale deed and the subsequent developments like mutating the names of defendants after the death of their father and making construction over the suit property by defendants, it can be said that they were enjoying the entire suit property as absolute owners. This circumstance is considered by the Trial Court to hold that the suit is not filed within limitation. The suit was filed for declaration that plaintiff is owner of half portion of the suit property and so, the suit was not tenable. The findings about the ownership are findings of fact. No substantial question of law as such is involved in the matter. It can be said that the declaration relief was not the ultimate relief as the defendants were in possession and for that reason also, the suit could have been dismissed. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/