

Sequeira

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

*SECOND APPEAL NO. 223 OF 2013
Along with
CIVIL APPLICATION NO.655 OF 2013.*

Jawahar Shikshan Mandal.

... Appellant

V/s.

Shri Bhau Bhimaji Hatrunkar & ors.

... Respondents.

Mr.Rahul Kadam, for the Appellant / Applicant.

Mr.P.P.More, for Respondent No.1.

*Coram : N.M. Jamdar, J.
Wednesday 15 June, 2016.*

P.C. :-

By this Appeal the Appellant challenges the Judgment and Order passed by the learned District Judge, Pune in Civil Appeal No.577 of 2008 whereby the Appeal filed by the Respondents is allowed and the Judgment and Decree passed by the learned Civil Judge, Pune has been set aside. Consequently, the suit filed by the Appellant has been dismissed.

2. The Suit was filed by the Appellant for a declaration that a decree in Regular Civil Suit No.2297 of 1990 has been obtained by fraud by Respondent No.1. This case was accepted by the learned Civil Judge. By

the impugned Judgment and Order the learned District Judge has reversed the said finding.

3. The learned counsel for the Appellant submitted that the Respondent No.1 was aware that the property was purchased by the Appellant and instead of joining the Appellant, the earlier owner was joined in the Suit and a decree for injunction on the ground of easementary rights has been obtained. He submitted that not joining the Appellant constituted fraud on the part of Respondent No.1. He also submitted that the Respondent No.1 has admitted in his evidence that the decree was obtained by fraud.

4. The Appellant is an educational institution. It is an admitted position that the Appellant purchased the property during the pendency of the Regular Civil Suit No.2297 of 1990. So at the time when the suit was instituted it was against the correct owner. The learned District Judge, has rightly observed that the Appellant ought to have been diligent by issuing notice before purchasing the property. If the Appellant was aggrieved by the decision in Regular Civil Suit No.2297 of 1990, the Appellant could have filed an Appeal seeking leave to appeal, but this has not been done. For setting aside the decree passed by the competent Civil Court on the ground of fraud, cogent material will have to be placed on record by party alleging so. When the Appellant had purchased the property during the pendency of the suit, the decree in favour of Respondent No.1 who had joined the correct owner at the time of filing suit cannot be stated to be obtained by fraud.

5. As regards the admission in the Written statement is concerned, there is error in which 'denied' word is missing. The Written Statement and the evidence will have to be read as a whole and the Respondent No.1 has contested the suit on merits contending that there was no fraud committed. The Appellant cannot take advantage of the typographical error or the fact that the particular assertion was not cross-examined. There is no perversity in appreciation of evidence by the learned District Judge to come to the conclusion that there was no fraud played by Respondent No.1. No substantial question of law arises. Second Appeal is dismissed.

6. In view of the dismissal of the Appeal the Civil Application stands disposed of.

(N.M. Jamdar, J.)