

Sequeira

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

SECOND APPEAL NO. 6 OF 2014

Shri.Ishwarpuri Genipuri Gosavi. ... Appellant

V/s.

Nitin Shivaji Kadam & anr. ... Respondents.

Mr.Prataprao Shinde, for Appellant
Mr.V.S.Talkute, for Respondents.

***Coram : N.M. Jamdar, J.
Tuesday 7 June, 2016.***

Oral order :-

The Appellant - original Plaintiff filed a suit bearing Regular Civil Suit No.21 of 2002 in the Court of Civil Judge, Junior Division, Phaltan for a declaration and injunction against the Respondent No.1. The declaration sought was that the sale deed executed by Respondent No.2 in favour of Respondent No.1 on 22 October 2001 is not binding on the Appellant and Respondent No.1 be restrained from causing obstruction to Appellant in respect of the suit property. The Suit was decreed by the learned Civil Judge by Judgment and Decree dated 10 September 2007. The Appeal filed by the Respondent No.1 bearing No.339 of 2007 was allowed by the learned District Judge, Satara on 21 January 2013.

2. The learned counsel for the Appellant submitted that the Respondent No.2 could not have sold his share to the Respondent No.1 by executing the sale deed as he had not become owner thereof. He submitted that in terms of the clauses of the compromise deed executed in an earlier suit, the consent of Appellant was necessary and for absence of any consent the sale deed is not valid.

3. The copy of the compromise in question is placed on record. In this compromise it is clearly stated that the Appellant and Respondent No.1 have share in the property and this position is acceptable to both the parties. It is also agreed that the shares have also been demarcated. The learned District Judge, considering these clauses rightly came to the conclusion that the parties, being brothers, were severed in estate and their respective portions were ear-marked. In view of clear terms of the compromise which both parties have consciously signed, shares have been demarcated. Though there is a term in the compromise that shares should not be sold without consent of each other such term cannot be elevated to an absolute embargo on a right of the Respondent No.2. The Appellant had given no objection for alienation of some part of the land by Respondent No.2 to some other person.

4. It was then submitted by the learned counsel for the Appellant that the dismissal of the Appeal would mean that the Appellant will have no right in the suit property at all. The apprehension expressed by the learned counsel for the Appellant is misplaced. The learned District Judge has relied upon the compromise entered into between the parties

and as per the compromise the Appellant has 50 per cent shares in the suit property and therefore, there is no question of Respondent No.1 or Respondent No.2 interfering in the possession of the Appellant as regards his share in the suit property as referred to in the compromise.

5. In the circumstances, no question of law arises, the Appeal is dismissed.

(N.M. Jamdar, J.)