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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.547 OF 2014

WITH
CIVIL APPLICATION NO.1330 OF 2014
IN
SECOND APPEAL NO.547 OF 2014

Balasaheb S. Dhende	...Appellant
V/s.	
Amol K. Bangar & Ors.	...Respondents

Mr.Dilip Bodake for the Appellant.

Mr.Madhav Jamdar for the Respondent Nos.1 to 3 and 15.

CORAM : R.D. DHANUKA, J.
DATE : 30TH AUGUST, 2016.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908 the appellant (original defendant no.1) has impugned the order and judgment dated 3rd March, 2014 delivered by the learned *Ad-hoc* District Judge – 2, Satara, dismissing the appeal filed by the appellant. In the said appeal, the appellant had impugned the judgment and decree dated 1st January, 2010 passed by the learned trial Judge passing a decree in the suit filed by the respondents praying for a declaration that the sale deed dated 9th

June, 2005 executed between the parties was not binding on them and for other reliefs. Some of the relevant facts for the purpose of deciding this second appeal are as under :

2. The respondent nos.1 to 4 in this appeal were the original plaintiffs. The appellant was the original defendant no.1. The respondent nos.5 to 15 were the original defendant nos.2 to 12 respectively. The parties described in this order are described as they were described in the proceedings before the learned trial Judge for the sake of convenience.

3. It was the case of the original plaintiffs that Shivram Pandu Chavan was the original owner of old R.S. No.414/2B/1, 1-Hector 41-R by virtue of the sale deed dated 16th June, 1982 alienated 35-R land in favour of Sou.Ashalata Jagdeorao Atale. By a consent deed dated 28th October, 1982, Mahadev Shivram Chavan, Baban Shivram Chavan, Rajaram Shivram Chavan and the defendant no.5 - Pandurang Shivram Chavan consented to the said sale deed dated 16th June, 1982. The defendant nos.2 to 4 and 7 to 10 are the legal heirs of the deceased Mahadev Shivram Chavan and Baban Shivram Chavan.

4. It was the case of the original plaintiffs that the predecessor of Mrs.Ashalata Jagdeorao Atale obtained N.A. permission on 28th June, 1984 pertaining to her purchased 35-R area

vide order of Collector bearing LLA/SR-96/1984. The said Mrs.Ashalata Jagdeorao Atale sub-divided the said plot into 11 plots and out of those 11 plots, sold one plot bearing no.19 (suit property) to Shankar Ramchandra Jankar vide sale deed date 2nd September, 1983. The said Shankar Ramchandra Jankar sold the said plot to Kisan Yeshwant Bankar on 31st July, 1984. The said Kisan Yashwant Bankar died on 27th October, 1989 survived by the plaintiffs and the defendant no.12. It was the case of the original plaintiffs that the plaintiffs and the defendant no.12 accordingly became the owners and possessors of the suit plot.

5. It was the case of the plaintiffs that the defendant nos.2 to 11 who had no right, title and interest of any nature whatsoever in the suit plot filed a collusive suit being Special Civil Suit No.11 of 1991 before the learned trial Judge and obtained a decree on 12th April, 1994. The defendant nos.2 to 11 filed execution application (Regular Darkhast No.134 of 2001). It is not in dispute that the plaintiffs in the suit which is the subject matter of this appeal were not impleaded as parties to the said suit. It is the case of the plaintiffs that the property which is the subject matter of this suit was not involved in the said Special Civil Suit No.11 of 1991 filed by the defendant nos.2 to 11. It is the case of the original plaintiffs that the defendant nos.2 to 11 colluded with the Circle Officer and Talathi and prepared the bogus

possession receipt dated 23rd June, 2004 in the proceedings (Regular Darkhast No.134 of 2001) and prepared false record in the names of the defendant nos.2 to 10 showing that they were placed in actual possession of the suit plot.

6. The defendant nos.2 to 11 got the name of the plaintiffs deleted from 7/12 extract in respect of the suit property. The original plaintiffs thereafter applied for impleadment before the Executing Court in the said Regular Darkhast No.134 of 2001. The said application was pending before the Executing Court. It was also the case of the plaintiffs that actual possession of the suit plot is with them.

7. The plaintiffs accordingly filed a suit for a declaration that the sale deed dated 9th June, 2005 was not binding on them, the entries effected in the name of the defendant no.1 in respect of the plot in the revenue record be declared as not binding upon the plaintiffs and applied for perpetual injunction against the defendants in the suit. The defendant nos.2 to 11 did not file any written statement though were served with the writ of summons and remained absent. The suit accordingly proceeded against them *ex-parte*. The defendant no.1 filed a written statement and resisted the suit on various grounds. The defendant no.1 alleged that he was the exclusive owner and was in possession over the suit plot on the basis

of the sale deed dated 9th June, 2005. The defendant no.1 also alleged that he had purchased the suit plot after making bonafide enquiry in respect of the title and possession in respect of the suit plot. The defendant no.12 filed a Purnis and admitted the claim of the plaintiffs in toto.

8. The learned trial Judge framed six issues. The plaintiffs as well as the defendant no.1 examined various witnesses before the learned trial Judge. The learned trial Judge by a judgment and decree dated 1st January, 2010 decreed the suit bearing Regular Civil Suit No.450 of 2006. Being aggrieved by the said judgment and decree, the defendant no.1 filed an appeal (Regular Civil Appeal No.364 of 2012) before the learned District Judge, Satara. By an order and judgment dated 3rd March, 2014, the learned District Judge – 2, Satara, dismissed the said appeal filed by the defendant no.1. Being aggrieved by the said order and decree dated 3rd March, 2014, the defendant no.1 filed this second appeal under section 100 of the Code of Civil Procedure, 1908.

9. Mr.Bodake, learned counsel appearing for the appellant (original defendant no.1) invited my attention to some of the annexures annexed to the appeal paper book and also the documents forming part of the separate compilation filed by the defendant no.1, including prayers in the earlier suit filed by the

defendant nos.2 to 11 before the learned trial Judge. The learned counsel made an attempt to convince this Court that the plot which is the subject matter of this suit was also the subject matter of the earlier suit (Special Civil Suit No.11 of 1991) in which the Civil Court had passed a decree. He submits that by virtue of the said decree passed by the Civil Court in the said Special Civil Suit No.11 of 1991, the predecessor in title of the suit plot became the owner thereof and had rightly sold the said property by a sale deed in favour of the defendant no.1. He submits that the defendant no.1 had issued a public notice in the newspaper and had made all possible enquiries about the title in respect of the suit property and also about the possession thereof. He submits that only after making such enquiries, the defendant no.1 had entered into a sale deed with the defendant nos.2 to 11 and thus he being the *bonafide* purchaser without notice, the learned trial Judge could not have declared the said sale deed entered into between the defendant no.1 and defendant nos.2 to 11 as illegal.

10. Learned counsel appearing for the defendant no.1 also invited my attention to the sale deeds dated 28th August, 1982 and 9th June, 2005 and would submit that the suit property claimed as ownership property of the plaintiffs herein was rightly sold by the defendant nos.2 to 11 in favour of the defendant no.1. It is submitted

that the plaintiffs never raised any objection in response to the public notice issued by the defendant no.1 before entering into a sale deed in respect of the suit property with the defendant nos.2 to 11. He submits that the plaintiffs have failed to prove that the suit property was in their possession as per the provisions of sections 102 to 104 and 110 of the Indian Evidence Act, 1872. He submits that the sale deed on the basis of which the plaintiffs were claiming rights i.e. sale deed dated 31st July, 1984 had been already cancelled in Special Civil suit No.11 of 1991 and thus the plaintiffs could not claim any ownership in respect of the suit plot. He submits that the said decree passed by the Civil Court in the said Special Civil Suit No.11 of 1991 was binding on the plaintiffs.

11. Mr.Jamdar, learned counsel appearing for the respondent nos.1 to 3 and 15 (original plaintiffs) invited my attention to the findings recorded by the learned trial Judge and also by the learned District Judge. He also invited my attention to some of the annexures to the compilation of documents filed by the appellant. He submits that if the properties which were described in Special Civil Suit No.11 of 1991 and the properties described in the present suit are compared, it would be clear beyond reasonable doubt that the suit plot, which is owned by the plaintiffs was not the subject matter of Special Civil Suit No.11 of 1991. He submits that the defendant

nos.2 to 11 had however, fraudulently included the property of the plaintiffs in collusion with the Circle Officer and Talathi and prepared the bogus possession receipt on 23rd June, 2004 in the Regular Dharkhast No.134 of 2001 and fraudulently included the plot of the plaintiffs in the possession receipt. He submits that his clients were neither parties to the said suit bearing Special Civil Suit No.11 of 1991 nor the said suit plot was the subject matter of the said suit. He submits that the said decree fraudulently obtained by the defendant nos.2 to 11 in the said suit was thus not binding upon the plaintiffs. He submits that on the basis of such fraudulently obtained decree, the name of the plaintiffs was deleted from the mutation record.

12. It is submitted by the learned counsel that both the Courts have considered this issue at great length in the impugned orders and judgment and has rendered the findings of fact on the issue that the defendants had falsely included the said plot of the plaintiffs in the possession receipt of Regular Darkhast No.134 of 2001. Both the courts have also rendered a finding that the plaintiffs had proved that the sale deed dated 9th June, 2005 of the suit plot executed by the defendant nos.2 to 11 in favour of the defendant no.1 was not binding upon the plaintiffs.

13. Learned counsel appearing for the plaintiffs also invited my attention to the sale deed dated 16th June, 1982 and would submit

that there was vast difference in the area alleged to have been sold under the said agreement and the plot which was the subject matter of the suit. He submits that both the Courts below have considered the entire evidence led by both the parties and have rightly granted the reliefs in favour of the plaintiffs which does not warrant any interference by this Court.

14. I have perused the record produced by both the parties with the assistance of the learned counsel for both the parties. A perusal of the record clearly indicates that the suit property was already transferred in favour of the plaintiffs by the predecessor in title of the plaintiffs Kisan Yeshwant Bankar on 31st July, 1985 under a sale deed which was duly registered. The said plot was not the subject matter of the Special Civil Suit No.11 of 1991. Admittedly the plaintiffs were not the parties in the said civil suit. In my view, the defendant nos.2 to 11 appear to have colluded with the concerned Circle Office and Talathi and illegally entered the suit plot in the possession receipt in the darkhast application.

15. A perusal of the record indicates that the plaintiffs continued to be in possession of the suit property all through out. When the names of the plaintiffs were removed from the mutation record, the plaintiffs came to know about the said fraud committed by the defendant nos.2 to 11 and immediately filed the suit for

appropriate reliefs.

16. In paragraph 11 of the impugned order passed by the appellate Court, the appellate Court has compared the plot numbers mentioned in the Special Civil Suit No.11 of 1991 and in the Regular Civil Suit No.450 of 2006 which suit was filed by the plaintiffs herein and has rightly rendered a finding that the suit plot which was owned by the plaintiffs was not included and was not the subject matter of Special Civil Suit No.11 of 1991. In my view, since the plaintiffs were not the parties to the said suit (Special Civil Suit No.11 of 1991), the decree passed therein was not binding upon the plaintiffs.

17. The plaintiffs in the suit filed by them had proved their title and possession before the learned trial Court. The learned trial Court has considered the entire evidence including documentary evidence and has rendered the findings of fact which are not perverse. The appellate Court has also framed various points for determination and have independently considered the entire documentary as well as oral evidence and have rendered the findings of fact which are not perverse. The findings being concurrent findings and not being perverse, cannot be interfered with by this Court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908. In my view, the appeal is devoid of merits.

18. I therefore, pass the following order :-

- a). Second Appeal No.547 of 2014 is dismissed.
- b). In view of dismissal of the second appeal, Civil Application No.1330 of 2014 does not survive and is accordingly dismissed.
- c). No order as to costs.

(R.D. DHANUKA, J.)