

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 546 OF 2000
WITH
FIRST APPEAL NO. 1569 OF 2003**

Ramchandra Govindrao Kottawar ... Appellant

Vs.

Mrs. Dorpadabai Appasaheb Dodmani & Ors. ... Respondents

Mr. S.S. Kulkarni i/b. Lalita Panchakshari, Advocate for the appellant in both the appeals.

Mr. Nachiket V, Khaladkar, Advocate for respondent no.1 in both the appeals.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: 13th January, 2016.

ORAL JUDGMENT:

Appeal from Order is directed against the judgment and order passed on 29th July, 2000 in Appeal No. 477 of 1998 decided by the District Court, Pune. First Appeal is filed by the same appellant against the judgment and order dated 6th October, 2003 passed by the learned Civil Judge Senior Division, Pune while decreeing the suit of the respondents. In the present case, the parties are fighting for the possession of the common plot with construction thereon, as both the parties claim that they have purchased the suit plot from one Lalita Joglekar. It is in dispute that Lalita Joglekar was daughter of deceased Laxman, who died on 8th August, 1995 and was the earlier owner of the suit land admeasuring approximately 2250 sq.ft. with construction 750 sq.ft. This plot belongs to the Society.

2. It is the case of the appellant that Lalita Joglekar has entered into registered sale deed dated 27th October, 1988 with the appellant for Rs.30,000/-, however the possession of the suit plot was not given to the appellant because she has inducted the respondents temporarily for fees of Rs.500/- p.m. and these respondents have inducted defendant no. 3 in the original suit filed by the appellant. However, as on today, other persons are not on the plot except the respondents, who are husband and wife. The appellant, therefore, filed S.C. Suit No. 397 of 1990 on 12th March, 1990 for possession against the respondents. The said suit was decided and decreed on 8th June, 1998 against which the present respondents preferred Civil Appeal No. 477 of 1998 and the said Appeal was allowed and matter was remanded back by the judgment and order dated 29th July, 2000 which is under challenge in this Appeal against Order.

3. On the other hand, the respondents, who are in possession of the suit plot and premises, filed the Special Civil Suit No. 1329 of 1990 for specific performance on 6th November, 1990 and it was decided and decreed on 6th October, 2003, i.e., after the date of remand passed in Civil Appeal No. 477 of 1998. Against the said judgment and decree, the appellant filed First Appeal No. 1569 of 2003 and is pending before the Court.

4. Today, the learned counsel for the respondents in First Appeal No.

1569 of 2003 has prayed that the value of the Appeal is not exceeding Rs.1 crore and hence it is to be transferred to District Court, Pune due to enhancement of pecuniary jurisdiction of the District Court.

5. The learned counsel for the appellant submitted that both the Appeals to be tried by one and the same Court, as both the parties are litigating for the same plot and that the issue of possession and title is involved. It is submitted that the Appeal from Order if heard by this Court and First Appeal is heard and decided by the District Court, Pune and if two orders are passed, then they are bound to affect adversely on the adjudication of the issue. The learned counsel for the appellant opposed the order of remand but insisted that the First Appeal is to be heard by this Court only if the order of remand is set aside.

6. Perused the judgment and order passed by the learned District Judge while allowing and remanding the matter in Appeal No. 477 of 1998. It appears from the said order that the evidence of Lalita Joglekar is required to be recorded, so also sale deed was required to be proved by following the proper procedure. It is to be noted that the Appeal was remanded in the year 2000, however, recording of evidence of the witnesses in the second suit was going on till 2003. Both the parties were aware that the Appellate Court has remanded the suit mainly for recording of evidence of Lalita Joglekar. So that the witness could have been called in that matter. I am informed that second suit proceeded ex-parte against

Lalita Joglekar who was served but chose not to appear before the Court. Now it is informed that the whereabouts of Lalita Joglekar are not known to both the parties. Under such circumstances, there is no point in remanding the matter for evidence of Lalita Joglekar. Both the Appeals are to be heard and decided together by one and the same Appellate Court, i.e., District Court, Pune. The First Appeal before this Court valued not above Rs. 1 crore, hence it stands transferred to District Court, Pune as the pecuniary jurisdiction of the District Court is enhanced. The order of remand is set aside for the reasons stated above. The learned District Judge to hear both the matters afresh especially by considering the rules of Evidence Act on the point of proof and burden of proof.

7. The order of remand is hereby set aside. Appeal No. 477 of 1998 is restored to the file of the District Court, Pune. First Appeal No. 1569 stands transferred to District Court, Pune. Both the Appeals are to be heard together. Registrar (Judicial) to take note of the same and do the needful by 30.01.2016. Parties to appear before the concerned District Judge to whom the Appeal is assigned on 10th February, 2016 at 11 a.m.

8. Both the Appeals are disposed of accordingly.

(MRIDULA BHATKAR, J.)