

*JPP*

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

*SECOND APPEAL NO. 250 OF 2016  
with  
CIVIL APPLICATION NO. 1557 OF 2015  
with  
REJECTED CASE NO. 1812 OF 2016  
with  
CIVIL APPLICATION NO. 1672 OF 2015  
and  
SECOND APPEAL (ST.) NO. 24904 OF 2015*

Ashok Kishan Borade and Ors. ...Appellants/Applicants.

V/s.

Santosh Kashinath Borade and Ors. ... Respondents.

Mr. A.S. Rao i/b. Jayshree Gade for the Appellants in SA 250/16 and Applicants in CAS 1672/15.

Mr. A.S. Rao i/b. Pratibha Borade for the Applicant in CAS 1557/15 and RC No. 1812/16 and for the Appellant in SAST. 24904/15.

Mr. Rajesh Kachare i/b. Ashish Ghadge for Respondent No.1 in both Appeals.

***CORAM : N.M. Jamdar, J.***

***05 July, 2016.***

**P.C. :-**

Second Appeal (Stamp) No. 24904 of 2015 filed by Defendant No.4 is dismissed by a conditional order passed on 20

November 2015. No application for restoration is filed.

2. Second Appeal No. 250 of 2016 is filed by the Original Defendant Nos. 5,6 and 7. This Appeal is taken up for consideration. Heard the learned Counsel for the parties.

3. A Suit was filed by the Respondents – Plaintiffs bearing No. 227 of 2001 against the present Appellants as well as the Appellants in Second Appeal (Stamp) No. 24903 of 2015, seeking partition of the suit property. The Suit was decreed by the learned Civil Judge and the sale deeds dated 27 July 1993, 30 May 1995, 4 December 1996 and 18 April 2001 executed in favour of Defendant Nos. 6 to 8 were declared as not binding on the share of the Plaintiffs and void and for partition of the property matter was sent to the Collector, Pune. Civil Appeal No. 194 of 2014 was filed by the Appellants in the District Court, Pune, which was dismissed.

4. It is the case of the Appellants that they are bonafide purchases of the suit property and that the sale deed was executed by Defendant No.4 is confirmed by Kashinath, father of Respondents – Plaintiffs. It is the case of the Appellants that Defendant No.4, pursuant to a mutation entry in his favour executed the said sale deeds which have been confirmed by Kashinath and the sale deed was for legal necessity. The learned Counsel for the Appellants

submitted that the sale deeds are valid as they have been duly executed by Kashinath and Defendant No.4 who had become owner in view of the mutation entry. He submitted that the suit was filed in the year 2001 which is beyond the period of limitation for challenging the sale deeds executed between 1993 and 1996.

5. It is not in dispute, and also is recorded by both the Courts that the suit property is a joint family property. That being the position, only karta - Kashinath could have disposed of the property that too for legal necessity. The sale deeds have not been executed by Kashinath, but by Defendant No.4. Merely because Kashinath may have confirmed the sale deed cannot mean that he is the one who is the vendor to the deed. Defendant No.4 is the vendor to these deeds who has sought to derive title from a mutation entry. Both the Courts have rightly held that on the basis of mutation entry, Defendant No.4 cannot become a sole owner of a joint family property.

6. As regard the issue of limitation, the sale deeds are executed on 27 July 1993, 30 May 1995, 4 December 1996 and after demise of Kashinath on 24 March 1997, the Suit is filed on 20 November 2001. It is upon the death of Kashinath that the succession opened and thereafter, the Suit filed on 20 November 2001 is within limitation. Therefore, the Suit has been rightly held

to be maintainable under Article 110 of Limitation Act. The Appellants have purchased the property without giving any legal notice, inspite of clear position in the revenue record that the Suit property is ancestral, with full knowledge that Defendant No.4 is not the Karta. Therefore, both the Courts have rightly held that the Appellants cannot be held to be bonafide purchasers. The Appeal filed by Defendant No.4 - the vendor is already dismissed for non-prosecution.

7. No question of law arises. The Second Appeal is dismissed. Civil Applications stand disposed of accordingly.

*(N.M. Jamdar, J.)*