

Sequeira

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

***SECOND APPEAL NO. 695 OF 2014.
Along with
CIVIL APPLICATION NO. 1451 OF 2014***

Mahipati Narayan Hakke (deceased through his legal heirs & ors.)	... Appellants / Applicants
V/s.	
Sambhaji Narayan Vaghmode.	... Respondent.

Mr.Pranil Sonawane, for Appellants and Applicants.
Mr.G.N.Salunke a/w Mr.Umesh Kurund, for Respondent.

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

Oral Order :-

The Appellants – original Plaintiffs suit bearing No. 642 of 1995 was decreed by the Civil Judge, Senior Division Barshi by Judgment and Decree dated 20 July 2011. The learned Civil Judge decreed the suit granting a declaration that the registered Sale deed dated 11 March 1994 in respect of the suit properties is null and void and by way of an order of permanent injunction restrained the Respondent from interfering with possession of the suit property. The Appeal filed by the Respondent was allowed by the learned District Judge, Solapur by Judgment and Order dated 29 March 2014.

2. I have heard learned counsel for the parties.

3. The learned counsel for the Appellants firstly submitted that the learned District Judge ought to have considered that deceased Rukminibai who is stated to have executed the registered Sale deed in question was suffering from various illnesses and could not have travelled to another village for registration of the Sale deed. The learned District Judge has taken note of the evidence of the Plaintiffs own witness Digambar Patil. I have perused the evidence of this witness. He has clearly admitted that Rukminibai attended the office of Sub-Registrar for the purpose of registration and at that time she was not unwell. The Appellants have not produced any independent medical evidence to show that Rukminibai was not in a position to attend the Registrars office. In the circumstances, the finding of fact recorded by the learned District Judge on this count, cannot be faulted with.

4. The learned counsel for the Appellants then submitted that the learned District Judge has erroneously discarded the report of the finger print expert. He submitted that merely on a technical ground and that earlier sale deed for comparison was not admitted in evidence, the report has been discarded. Firstly, when the witness examined by the Appellant himself admits deceased Rukminibai went to the Sub-registrar office for execution of document and this finding of fact is recorded, the report of the expert, which has to be looked at with caution, pales into insignificance. Even otherwise the learned District Judge has rightly observed that the evidence of this expert is cryptic and the document which was used for comparison was not an admitted document. The

learned District Judge has evaluated comparative merit of each piece of evidence and has recorded finding of fact that deceased Rukminibai was in a position to execute the deed in question. The witness examined by the Appellants has also admitted that from the date of sale deed, the Respondent is in possession. In the circumstances, no question of law arises. Second Appeal is dismissed.

5. The Civil Application stands disposed of.

(N.M. Jamdar, J.)