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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.25 OF 2007

Anant B. Hajare, since deceased through His L.Rs. - Uttam A. Hajare & Ors.	...Appellants
V/s. Haribhau M. Hajare & Ors.	...Respondents

Mr.P.B. Paranjape for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 31ST AUGUST, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908 the appellants (original plaintiffs) have impugned the order and judgment delivered by the learned District Judge, Pune dated 4th September, 2006 dismissing the appeal filed by the appellants. In the said appeal, the appellants had challenged the judgment and decree passed by the learned trial Judge dismissing the suit filed by the appellants *inter-alia* praying for a declaration that the plaintiffs were the owners and possessors of 1/16th share out of the plots bearing Gat No.1164 situated in the village Kanhersar, Taluka Khed, District Pune.

2. It was the case of the plaintiffs that the suit property was their ancestral property. Bhimaji Hajare was the father of the plaintiffs and the defendant nos.4 to 6.

3. It was the case of the plaintiffs that the suit property being ancestral property, the father alone could not have sold the entire property without the consent of the plaintiffs, who had also claimed share in the property in favour of the defendant nos.1 to 3 vide sale deed dated 18th December, 1984. It was their case that the defendant nos.1 to 3 had used undue influence upon the father for execution of the sale deed dated 18th December, 1984 in respect of the suit property. It is the case of the appellants that when the appellants came to know about the said sale deed between the father and defendant nos.1 to 3, the appellants immediately filed a suit for appropriate reliefs and thus the suit was not barred by law of limitation.

4. The suit was resisted by the defendants by filing the written statement. The learned trial Judge framed seven issues for determination. The plaintiffs and the contesting parties led oral evidence before the learned trial Judge.

5. After considering the oral as well as documentary evidence, the learned trial Judge held that the plaintiffs have failed to prove that the defendant nos.1 to 3 had got the document executed

from Bhikaji Hajare by using undue influence. Considering the oral evidence led by the parties, the learned trial Judge was also of the view that that the suit filed by the plaintiffs for declaration of their ownership and for other reliefs were barred by law of limitation.

6. Being aggrieved by the judgment and decree passed by the learned trial Judge, the plaintiffs herein filed an appeal (Civil Appeal No.729 of 2003) before the learned District Judge, Pune. The learned District Judge framed various points for determination and after considering the same has rendered an independent finding on each of the issues raised by the plaintiffs and has dismissed the said appeal by recording detailed reasons.

7. With the assistance of the learned counsel for the appellants, I have have perused the record as well as the findings rendered by both the Courts below, which findings in my view, are concurrent findings and are not perverse and thus cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908.

8. The submission of the learned counsel for the appellants that the two Courts below have not properly appreciated the evidence is devoid of merits. Both the Courts below have rendered detailed reasoned order after considering oral as well as documentary evidence and thus there is no substance in the

submission of the learned counsel for the appellants.

9. Insofar as the submission of the learned counsel for the appellants that the property was ancestral property and thus the father could not have sold the property without their consent is concerned, a perusal of the record indicates that the appellants have failed to prove that the suit property was the ancestral property or that the plaintiffs had share in the suit property. In my view the appeal is devoid of merits. No substantial question of law has arisen in this second appeal. The second appeal is accordingly dismissed. No order as to costs.

10. In view of the dismissal of the second appeal, the civil application pending if any, does not survive and is accordingly dismissed.

(R.D. DHANUKA, J.)