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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.666 OF 2014
WITH
SECOND APPEAL NO.23 OF 2015

Jaywant B. Patil, since deceased through His L.Rs. - Smt.Laxmi J. Patil & Ors.	...Appellants
V/s. Smt.Savitribai A. Patil & Ors.	...Respondents

Mr.Vaibhav Ghogare for the Appellants.

Mr.V.S. Talkute i/b Mr.S.R. Ghanawat for the Respondent Nos.2 to 4.

CORAM : R.D. DHANUKA, J.
DATE : 26TH SEPTEMBER, 2016.

P.C. :-

1. By these two second appeals filed by the appellants (original defendants), the defendants have impugned the common judgment and decree dated 4th September, 2013 passed by the learned District Judge – 1, Islampur, dismissing Regular Civil Appeal No.77 of 2004 and Regular Civil Appeal No.78 of 2004 filed by the defendants thereby confirming the common judgment and decree dated 26th July, 2004 passed by the learned Joint Civil Judge, Junior Division, Islampur, dismissing the suit filed by the defendants herein and partly decreeing the suit filed by the plaintiffs.

2. Savitribai Anandrao Patil and few others were the plaintiffs in Regular Civil Suit No.101 of 1992 and had applied for declaration, partition and separate possession in respect of the suit property whereas Jaywant Balwant Patil along with others were the plaintiffs in Regular Civil Suit No.34 of 2000 and had applied for declaration and injunction in respect of the suit property. In view of there being a common question involved regarding the common properties, the learned trial Judge decided both the suits together. The parties led common evidence in both the suits. The learned trial Judge has framed separate issues in respect of both the suits.

3. Insofar as Regular Civil Suit No.101 of 1992 filed by the widow Savitribai Anandrao Patil is concerned, the learned trial Judge has held that there was partition between her husband and his brothers in the year 1947. The plaintiff had proved that the properties referred as "B" and "C" were allotted to her husband. The plaintiff had proved that she became actual owner of the suit property insofar as the suit properties A/1 and A/3 is concerned. The learned trial Judge passed a decree that the plaintiff was entitled for the declaration of her ownership over the suit property 1/B only and rejected the suit in respect of the remaining properties.

4. Insofar as the Regular Civil Suit No.34 of 2000 is concerned, the learned trial Judge rendered a finding that the plaintiff

in the suit had failed to prove that maintenance deed and surrender deed were got executed from her by the defendants when she was a minor. The learned trial Judge rendered a finding that Savitribai Anandrao Patil had become the owner of the suit property in view of section 14(1) of the Hindu Succession Act by virtue of maintenance deed dated 7th November, 1951. The learned trial Court rendered a finding against the plaintiffs in the said suit that the plaintiffs were not entitled to a declaration that the sale deed dated 7th February, 1998 executed by Savitribai Anandrao Patil in favour of the defendant nos.2 to 4 was binding on them. The learned trial Judge refused to grant the relief of perpetual injunction sought by the plaintiffs in the Regular Civil Suit No.34 of 2000.

5. Being aggrieved by the said common judgment and decree passed by the learned trial Judge in these two suits, the defendants filed two separate appeals before the learned Additional District Judge, Islampur.

6. The learned District Judge – 1, Islampur framed two points for determination and rendered a common judgment dated 4th September, 2013 and dismissed both the appeals filed by the defendants. The first appellate Court has rendered a finding that the plaintiff failed to prove that the maintenance deed and surrender deed was not executed by the defendants when she was minor. This

finding of the two Courts below has not been impugned by the original plaintiff Savitribai Anandrao Patil by filing any separate appeal. The first appellate Court however, has rendered a finding that the learned trial Judge was justified in declaring that the plaintiff Savitribai Anandrao Patil was the absolute owner of the properties bearing No.35/4 and 35/1.

7. Learned counsel appearing for the defendants submits that the learned trial Judge has interpreted the maintenance deed not strictly but decided the entire matter by applying the principles of equity. He submits that the interpretation of the learned trial Judge on the maintenance deed is totally improper and not in proper perspective. He submits that the learned trial Judge has also not considered the effect of the finding rendered against the original plaintiff that the maintenance deed and the surrender deed were not executed in favour of her by the defendants when she was minor.

8. Learned counsel appearing for the original plaintiff supported the findings rendered by the two Courts below and submits that the findings being not perverse, cannot be interfered with by this Court under section 100 of the Code of Civil Procedure.

9. A perusal of the finding rendered by the learned trial Judge indicates that the husband of the plaintiff became the owner of the suit property to the extent he was entitled to the share in the larger

property. The learned trial Judge has rendered a finding that the plaintiff Savitribai Anandrao Patil had become owner of the suit property by virtue of maintenance deed dated 7th November, 1951. The other properties were allowed in partition to other brothers. The husband of the plaintiff Savitribai Anandrao Patil had executed a deed of maintenance in favour of Savitribai Anandrao Patil and had given the said properties to the plaintiff. In my view, the findings rendered by the learned trial Judge are rendered after considering the oral as well as documentary evidence and being not perverse, cannot be interfered by this Court.

10. Insofar as the impugned judgment and decree rendered by the first appellate Court is concerned, a perusal thereof also indicates that the learned trial Judge has considered oral and documentary evidence and has rightly rendered a finding that the plaintiff became absolute owner of the properties bearing No.35/4 and 10/1.

11. Insofar as the submission of the learned counsel for the original defendants that the learned trial Court have not interpreted the maintenance deed properly is concerned, in my view, there is no substance in the submission of the learned counsel for the original defendants. A perusal of the judgment and decree of both the Courts below clearly indicates that true, proper and correct interpretation of the settlement deed is made by the two Courts below. In my view,

the findings rendered by the two Courts below are concurrent findings and being not perverse, cannot be interfered with by this Court under section 100 of the Code of Civil Procedure.

12. Both the appeals are devoid on merit and are accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)