

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL No. 697 of 2017
WITH
CIVIL APPLICATION NO. 13599 of 2017
IN
SECOND APPEAL NO. 697 of 2017

Ashabai W/o Eknath Khade,
(Ashabai Santoshkumar Bhalerao),
age 54 years occupation household and labour
R/o Partur Taluka Partur District Jalna. **...APPELLANT**

VERSUS

1. Mandakini W/o Santoshkumar Bhalerao,
age 60 years occupation pensioner
R/o Sambhaji Nagar, Jalna Tal. and Dist. Jalna
2. Rekha W/o Sandeep Sane,
age 32 years occupation contractor
R/o as above. **... RESPONDENTS**

Mrs Geeta Deshpande, Advocate for appellant

CORAM : NITIN W. SAMBRE, J.

DATE : 8th November, 2017

ORAL ORDER :

The respondent No.1/plaintiff filed Regular Civil Suit No. 17 of 2013 for possession of the suit property alleging that suit property was purchased by one Santosh, father of respondent No.2

Rekha and husband of respondent No.1 Mandakini out of joint income of the family. Santosh had live-in-relationship with present appellant/original defendant No.1 and it is claimed that Santosh has executed gift deed in her favour out of love and affection and towards her maintenance.

2. Trial Court disbelieved the gift deed and decreed the suit in favour of respondent No.1/plaintiff, which judgment is confirmed in appeal. As such, this Second Appeal.

3. The learned Counsel for the appellant while trying to make out case for consideration in Second Appellate Jurisdiction would urge that the suit by respondent No.2 Rekha being Regular Civil Suit No. 199 of 2005 for declaration that the gift deed is null and void, was dismissed. The said findings will operate as res-judicata in the present proceedings.

4. According to her, the matter can be referred for mediation as the relationship between the plaintiff and defendant No.1 could be borne out of record.

5. Considered the submissions made by the learned Counsel for the appellant. So far as the claim that Regular Civil Suit No. 199 of 2005, of which copy of judgment produced at Exh. 35,

depicts that the said suit was presented by Rekha and not by the present plaintiff. In view thereof, both the Courts below have rightly held that the said judgment would not operate as res-judicata in the present matter.

6. So far as the second submission for referring the matter for mediation is concerned, it is really difficult to accept such submission at this stage, particularly, when in Trial Court and Appellate Court, the parties have not settled the issue. The present appeal is against concurrent findings.

7. As such, for reasons recorded here-in-above, the appeal fails and stands dismissed.

8. In view of dismissal of the Second Appeal, the Civil Application stands disposed of.

9. Needless to say that in case proceedings is filed claiming right, title or interest in suit property by the present appellant, same be decided without being influenced by the findings recorded by this Court.

(NITIN W. SAMBRE, J.)

pjm