

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

SECOND APPEAL NO.60 OF 2017

Ram S/o Achutwar Rajput
and others. ... Appellants.

Versus

Wamanrao S/o Tulshiram Biradar
and others. ... Respondents.

...
Mr.P.R.Katneshwarkar, advocate for the Appellants.
Mr.R.S.Shinde, advocate for Respondent Nos.1 and
2.
Mr.T.M.Venjane, advocate for Respondent Nos.3 to
6.

...

CORAM : N.W.SAMBRE, J.

Date : 27.07.2017.

PER COURT :

1. Heard.

2. Learned Extra Joint Civil Judge (Senior
Division), Latur in RCS No.128/2012 (Waman S/o
Tulshiram Biradar and another Vs. Gopal S/o

Rajkumar Shinde (Patil) and others) passed a decree that sale deed of suit plot dated January 20, 2007 in favour of defendant No.1 and sale deed of suit plot dated May 17, 2007 executed by defendant No.1 in favour of defendant No.2 are illegal, null and void. By the same decree, the trial Court declared original plaintiffs as owner of the suit plot and entitled to recover possession of the suit property from defendant Nos.1 and 2 and subsequent purchasers i.e. defendant Nos.3 to 6.

3. The appeal being RCA No.107/2013 at the behest of the present appellants - original defendant Nos.5 and 6 suffered an order of dismissal passed by District Judge-4, Latur on July 19, 2016. As such this Second Appeal.

4. The ground sought to be canvassed is whether the plaintiffs were able to discharge their burden in proving the fact that the sale deed dated January 20, 2007 executed by deceased Rekha in favour of defendant No.1 was required to be declared as null and void and whether the

plaintiffs have discharged their burden to that effect. The second ground that is sought to be canvassed is Rekha being legal heir of Jagdish, was entitled to transfer her share.

5. For considering the aforesaid submissions, it is necessary to understand the factual matrix :

Rekha was married to Jagdish, son of plaintiffs. Jagdish was serving as an Assistant Teacher, who purchased the suit plot. After whose demise his mother Sheshabai and deceased Rekha were remained as legal heirs. Rekha in turn styling herself to be the absolute owner transferred suit plot to defendant No.1 her nephew, who in turn transferred said title in favour of defendant No.2 onwards.

6. The defendant No.1 claimed to be in possession of original sale deed who has failed to produce the same before Courts below though was directed. The plaintiffs produced certified copy of the sale deed which prompted the trial Court to frame issue at Exh.23. The plaintiffs

thereafter proved their right over the suit property and having noticed that defendant No.1 was unable to justify that Rekha was unable to sign sale deed Exh.66 has drawn an inference that the sale deed executed in favour of defendant No.1 was by impersonation.

7. The present appellants claimed to be successor in title to defendant No.1 who further claims that he purchased property without notice.

8. The fact remains that after appellants were added defendant Nos.5 and 6, they engaged lawyer so as to defend their interest in the suit. During the proceedings, the appellants remained absent and have not even responded to the notice issued by their lawyer. As such the claim for remand of the matter on the count that they remained undefended is liable to be rejected.

9. The finding on the issue of sale deed being not valid, are concurrent and based on the burden discharged by the plaintiff to that

effect. Both the Courts below have rightly passed burden on defendant No.1 in whose favour deceased Rekha has executed sale deed to prove that on the date of execution of sale deed, she was not in a position to sign the sale deed and as such put her thumb impression. The said burden since being not discharged by the defendant No.1, both the courts below have rightly held that the suit of the respondents-plaintiffs is liable to be decreed.

10. In the aforesaid background, I hardly notice any question of law which requires consideration. The appeal as such fails and is dismissed.

11. Failure of appeal will not come in the way of the appellants to initiate such proceedings against the defendants for recovery of amount of consideration which the appellants have parted.

(N.W.SAMBRE, J.)

