

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.875 OF 2015
WITH
CIVIL APPLICATION NO.624 OF 2011
IN
SECOND APPEAL NO.875 OF 2015**

Parvati Bhikoba Yadav & Ors.

... Appellants

vs.

Kamlabai Vitthal Khomane
deceased, through his legal heirs
Mohan Vitthal Khomane & Ors.

... Respondents

...

Mr. Rahul Agarwal I/b Ms. Rutuja Ambekar for the Applicants/
Appellants.

Mr. Tushar Sonawane I/b Mr. Prashant S. Hagare for the Respondent
Nos.1(A) to 1(E).

None for the Respondent Nos.4 and 5.

Coram : **A.A. Sayed, J.**

Date : 23 November 2017

ORDER:

1 This Second Appeal filed under section 100 of the Code of Civil Procedure, 1908, impugns the judgment and order passed by the Ad-hoc Additional District Judge-1, Baramati, District Pune, dismissing the Appeal filed by the Appellants/original Defendant Nos.1 & 2 thereby confirming the judgment and order of the Trial Court decreeing the suit filed by the original Plaintiff-Kamlabai Vitthal Khomane (since deceased) and restraining the Appellants/original Defendant No.1 and other Defendants from creating any hurdles from using the suit well by pipeline and the adjoining land.

2. The Plaintiff (since deceased) had filed the suit for perpetual injunction against the Defendants from creating obstruction in respect of her use of the suit property. It was the case of the Plaintiff that she had purchased $\frac{1}{2}$ share of 4 Guntha land situated in Southern East Corner of land Block No.191 i.e. suit property from the respondents on 18.03.1987 for consideration of Rs.5000/- and she had half share in the well and the land. She had installed electric meter and pipelines from the well to irrigate her land Block No.186 situated at Villlage Jalgaon Supe. A registered Sale Deed dated 18 March 1987 was executed by the Defendant Nos.1 and 2 in her favour. The Plaintiff also relied upon the 7/12 Extract and Index II. On the basis of the Sale Deed her name was mutated in the record of rights.

3. The case of the Defendant Nos.1 and 2 in their Written Statement was that they owned and possessed land admeasuring 1 H 05 R out of land Block No.191. The well was dug about 16 years back by the Defendants. The Defendants amended the Written Statement and filed Counter Claim. It was contended that the said document i.e. Sale Deed was against the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 and therefore the Plaintiff did not acquire any right in the suit property. According to the Defendants, they had allowed the Plaintiff to lift the water from the suit well without any consideration and in good faith. It was contended that the Sale Deed dated 18 March 1987 was a false

document and the same be declared null and void and the Plaintiff be restrained from collecting water from the suit land.

4. The Trial Court held that the Plaintiff had proved that she had half share in the suit property. The Trial Court held that the Defendant Nos.1 and 2 had illegally obstructed the Plaintiff from use of the suit property. The Trial Court held that the Counter Claim challenging the Sale Deed was time barred in view of the Article 56 of the Limitation Act, 1963 inasmuch as the Sale Deed was executed on 18 March 1987, the suit was filed on 11 October 1990 and the Written Statement was filed on 10 June 1991. The Trial Court concluded that the Defendant Nos.1 and 2 ought to have challenged the registered Sale Deed within three years from execution thereof. The Trial Court noted that there was no transfer of a fragment but transfer of rights in the suit well as well as the adjoining land.

5. The lower Appellate Court after reappreciating the evidence on record concurred with the findings of the Trial Court. The lower Appellate Court found that the Defendant No.1 in his cross-examination admitted that the Sale Deed bears the signature of Defendant No.2 and that the Sale Deed was in respect of the suit well and that since the execution of the Sale Deed, the Plaintiff was lifting water from the suit well through her pipeline and no objection was raised in respect of the mutation of entry in favour of the Plaintiff in the record of rights. The

lower Appellate Court concluded that the Plaintiff had become the owner of the suit property to the extent of $\frac{1}{2}$ share on the basis of the Sale Deed. The lower Appellate Court held that the Plaintiff purchased the joint share of suit property alongwith Defendants and the Sale Deed does not create fragment. The lower Appellate Court accordingly dismissed the Appeal.

6. Having heard the learned Counsel for the Appellants and the learned Counsel for the Respondents and considering the facts and circumstances of the case, in my view, no case is made out to interfere with the concurrent findings of facts arrived at by the Courts below. No substantial question of law arises in the Second Appeal. It is required to be noted that the suit of the Plaintiff was limited to the relief of perpetual injunction.

7. In the circumstances, the Second Appeal is dismissed. There shall be no order as to costs. The Civil Application does not survive and to stand disposed of. It is fairly conceded by the learned Counsel for the Respondents that the findings of the Courts below would not in any manner bind the authorities under the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947.

(A.A. Sayed, J.)