

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 32 OF 2016
WITH
CIVIL APPLCAITON NO. 39 OF 2016
IN
SECOND APPEAL NO. 32 OF 2016**

Chhabulal Kaluram Bhavsar @ Torne & Ors. ...Appellants

vs.

Shashikant Kaluram Torne @ Bhavsar & Anr....Respondents

....

Mr. P.R. Arjunwdkar, for the Appellants.

Mr. M.N. Sandhyanshiv, for Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

DATED : 2 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order passed by the District Court at Kalyan in Regular Civil Appeal No.14 of 2013. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein and confirmed the judgment and decree passed by the Trial Court. By the judgment and decree, the Trial Court had dismissed the suit filed by the Appellant for a declaration that the sale deed executed by Respondent No.1(Original Defendant No.1) in favour of Respondent No.2(Original Defendant No.2) was illegal and not binding on the Appellants (Original Plaintiffs).

3. The parties to the suit are real brothers, Plaintiff No.1 being the eldest amongst them. The suit property consisting of non-agricultural plot of land bearing Survey No.80, Hissa No.1(Part) admeasuring 669 sq. meter, Chikanghar, Tal. Kalyan, was purchased in the name of Defendant No.1 under a registered sale deed executed by the vendor for Rs.8,000/-. It is this property, which was transferred by Defendant No.1, by the subject sale deed in favour of Defendant No.2. It is the Plaintiffs' case that the family was a joint family consisting of five brothers, including the Plaintiffs and the Defendants and that the suit property was purchased from the joint contributions of all brothers. It is further the Plaintiffs' case that expenditure for construction of a house on the suit property, called Torne Niwas, was also incurred from out of the joint contributions from the brothers. Effectively, in the premises, the Plaintiffs' claim is that though the suit property originally stood in the name of Defendant No.1, it is jointly owned by the Plaintiffs and the Defendants as members of a joint family. No such declaration is, however, sought in the plaint. Be that as it may, the question whether or not the property is of the sole ownership of Defendant No.1 or a joint family property, is a pure question of fact. Both courts below have come to a concurrent finding that the property was owned exclusively by Defendant No.1 and that the Plaintiffs had failed to prove that the suit plot of land was purchased, or the construction thereon was carried out, from the joint family income or contributions from all brothers. No substantial question of law arises in respect of these conclusions of fact.

4. Learned Counsel for the Appellants submits that various

facts, including the custody of the original sale deed of 1972 (in the name of Defendant No.1), the construction permission in respect of Torne House, the account maintained by Appellant No.1, including all bills and receipts in respect of the construction carried out, coupled with the fact that the son of Appellant No.1 was running a floor mill in the suit property, taken together, clearly make out a case of joint ownership through joint contribution of all brothers. That is but a matter of appreciation of evidence. This is not a case where these facts or records produced by the Plaintiffs in support of these facts are not considered by the courts below whilst arriving at their conclusion. These aspects of the matter are duly analyzed by the District Court in the impugned judgment and order. It does not emerge from the record that any particular relevant or germane circumstance or material was disregarded by the courts below. So also, it cannot be said that any irrelevant or non-germane circumstance or material was considered by the courts below for arriving at the findings. The findings cannot be said to be based on no evidence. The conclusions, being possible conclusions based on evidence, cannot be faulted on any question of law, much less any substantial question of law.

5. There is no merit, accordingly, in the Second Appeal. The Second Appeal is dismissed. No order as to costs.

6. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)