

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 509 OF 1994

Rajaram Bhiva Chavan

...Appellant

vs.

Shri Parshuram Bhiva Chavan,
since deceased by his legal heirs and
representatives

1. Smt. Devakabai Parshram Chavan & Ors.

...Respondents

Mr.V.S. Gokhale for Appellant.

Mr.S.R. Page for Respondents.

CORAM : S.C. GUPTE, J.

6 JANUARY 2017

P.C. :

This second appeal arises from an order passed by the Second Additional District Judge at Sangli in Regular Civil Appeal No.225/1988. By the impugned order, the learned District Judge dismissed the Appellant's appeal.

2 The second appeal was admitted on the ground of two substantial questions of law, namely, (1) Whether the Plaintiff's claim of title was hit by the Benami Transactions (Prohibition) Act, 1988, and (2) What was the legal effect of the purported document of partition dated 3/1/1981.

3 The Plaintiff, who is the Appellant in this second appeal, claims to be the owner of the suit property, which admeasures 225 sq.ft. along with a house standing thereon. The property forms part of City Survey No.1277, which admeasures 450 sq.ft. Of this larger plot, the suit property is said to be one half portion on the western side. The Plaintiff claims ownership and

right to possess the property on the basis of a purported agreement / deed of partition executed on 3/1/1981. It is not disputed by the Plaintiff, and it is in fact acknowledged by the purported agreement / deed of partition relied on by him that the entire larger plot of CS No.1277 was purchased by the Defendant. It is, however, the Plaintiff's case that the Plaintiff had contributed 50% of the purchase price when this land was purchased by the Defendant. On the basis of this contribution, it is the Plaintiff's case that the suit agreement / deed of partition was executed between the parties on 3/1/1981, dividing the property between the parties as mentioned in the document. The agreement recorded that the respective parties have taken possession of their respective portions and that a proper sale deed was to be executed by the Defendant in favour of the Plaintiff within fifteen days. Admittedly, no such sale deed was executed in favour of the Plaintiff. In the premises, the conclusion of the trial court as well as the appeal court that the Plaintiff has not proved his title in the suit property is unexceptionable. The document of 3/1/1981 by itself cannot be said to have created any title in favour of the Plaintiff. It, in fact, provides for a sale deed to be executed in favour of the Plaintiff. Question No.2 is required to be decided accordingly. In view of this, the first question need not really be decided. The other claim of the Plaintiff, namely, the claim for perpetual injunction which is *inter alia* based on his permissive possession in pursuance of the purported agreement / deed of partition, was accepted by the trial court. Based on such acceptance, the Defendant is restrained from disturbing the Plaintiff's possession of the western half of City Survey No.1277 till his lawful dispossession by the Defendant. This part of the order passed by the trial court was not the subject matter of the appeal filed by the Plaintiff. What the Plaintiff had contested in the appeal was the refusal of the trial court to grant him declaration of ownership. As I have noted above, there is

no merit in the claim of ownership and the dismissal of the appeal cannot be faulted on any ground.

3 There is, thus, no merit in the second appeal and the same is dismissed. No order as to costs.

(S.C. Gupte, J.)