

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

**SECOND APPEAL NO. 578 OF 2015
WITH
CIVIL APPLICATION NO. 1278 OF 2015
IN
SECOND APPEAL NO. 578 OF 2015**

Shivajirao Dattatray Sase and Ors.Appellants
V/s.
Sambhaji Dattatray Sase and Ors.Respondents

Mr. Abhijit M. Adagule for the appellants.
Mr. Onkar Mane I/b. Satyajeet Shirke for R.Nos.1 to 3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 18TH DECEMBER, 2018.**

P.C.:

. The appellants have questioned the legality of the judgment and order dated 24/09/2014 passed by the Ad-hoc District Judge-1, Kolhapur in Regular Civil Appeal No.205/2010, arising from the judgment and decree dated 18/08/2010 passed by the Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.600/2009.

2. The appellants were the plaintiffs and the respondents were the defendants in the suit and shall be hereinafter referred to as 'the plaintiffs' and 'the defendants'.

3. The dispute in the suit was in respect of the suit property under

City Survey No.1989 at Kolhapur city. The said property was originally owned by one Dattatray Krishna Sase. The said property was subdivided into nine equal parts and accordingly the property card record was separately prepared. There was oral partition in respect of the suit property amongst plaintiff nos.1 to 5, defendant no.1, Shankar Dattatraya Sase and Sushilabai Sase. The property under City Survey No.1989/4 admeasuring 60.46 sq. mts, out of which 30.23 sq. mts was allotted to Sushilabai and 30.23 sq. mts was kept for common enjoyment. The property under Survey No.1989/8 admeasuring 70.04 sq. mts was allotted to Sushilabai Dattatray Sase, the appellants and the respondents herein. Said Sushilabai Dattatray sold the entire subdivision 4 and 9 and 1/4th share in sub-division 8 of Survey No.1989 to the respondents by executing sale deeds dated 09/10/1991 and 19/10/1991.

4. The appellants/plaintiffs have challenged the sale deed alleging that Sushilabai was not the exclusive owner of the said property and hence, could not have sold the said property to the respondents. The appellants claim that the said sale deeds are not binding upon them. The appellants/plaintiffs further claim that they are in possession of the suit property and that the respondents are interfering with their

possession in respect of the suit property on the basis of the said sale deed. The appellants, therefore, sought relief of perpetual injunction.

5. The respondents contested the suit. They denied that the appellants are the owners or co-sharers of the suit property under subdivision 489 of City Survey No.1989/9. They also disputed that the sale deed are bogus and are not binding upon them.

6. The learned Trial Judge framed the issues and upon considering the evidence adduced by the plaintiffs, dismissed the suit. The appellants challenged the said order in Regular Civil Appeal No.205/2010. The Appellate court, upon appreciating the evidence on record dismissed the appeal by the impugned judgment dated 24/09/2014. Hence, this Second Appeal under section 100 of the Civil Procedure Code.

7. Heard Mr. Abhijit Adagule, learned counsel for the appellant and Mr. Onkar Mane, learned counsel for the respondents. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

8. A perusal of the records clearly indicates that the appellants had

challenged the validity of the sale deed solely on the ground that the said Sushilabai Dattatray was not the exclusive owner of the suit property and hence, she was not competent to sell the entire property to the respondents. It was alleged that since the plaintiffs/appellants were not parties to the said sale deeds, the sale deeds are not binding upon them. Whereas, in the evidence before the Court was that the plaintiffs/appellants had disputed the execution of the said sale deed by Sushilabai. The evidence adduced by the appellants was not consistent with the pleadings and hence could not have been looked into. Furthermore, the said sale deeds were executed in the year 1991 and were challenged in the year 2009. Both the Courts below have rendered findings that the appellants had knowledge of the execution of the said sale deeds and hence the suit was barred by limitation.

9. The findings recorded by the Courts below are based on evidence on record. The findings of facts are neither perverse nor illegal. The appeal does not involve any substantial question of law. Hence, the Appeal is dismissed.

10. Civil Applications stands disposed of in view of the dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)