

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.326 OF 2018

ALONG WITH

CIVIL APPLICATION NO.729 OF 2018

Subhash Jaisinghrao Nawle (*Since Deceased*),

Through LRs.:-

Sagar Subhash Nawle and Ors.

.... Appellants-Applicants

V/s.

Ashok Jaisingrao Nawle and Ors.

.... Respondents

Mr. Tejesh Dande, a/w. Mr. Bharat Gadhavi and Mr. Vishal Navale, I/by
M/s. Tejesh Dande and Associates, for the Appellants-Applicants.

Mr. S.R. Nargolkar, a/w. Mr. Ketan Joshi, I/by Mr. Omkar V. Amberkar,
for Respondent Nos.1 and 2.

Mr. Sharad J. Nawle, Respondent No.3, is present in-person.

Mrs. Mangala S. Bhujbal, Respondent No.4, is present in-person.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD JULY 2018.

P.C. :

1. Heard Mr. Dande, learned counsel for the Appellants-Applicants,
and Mr. Nargolkar, learned counsel for Respondent Nos.1 and 2.

2. By this Second Appeal, the concurrent finding of the fact, as
recorded by the Trial Court and confirmed by the first Appellate Court,

is challenged. The Appeal is directed against the 'Judgment and Decree' dated 7th March 2017 passed by the Ad-Hoc District Judge-1, Pune, in Civil Appeal No.746 of 2012, which was preferred against the 'Judgment and Decree' dated 20th March 2006 passed by the Court of Civil Judge, Senior Division, Pune in Special Civil Suit No.619 of 2000.

3. The said Suit was filed by the Appellants herein for the relief of declaration and injunction. Appellant No.1 and Respondent Nos.1 and 3 are the real brothers. Respondent No.4 is their married sister. Deceased Jaisingh Rao was their father. He died on 27th June 1989, leaving behind his movable as well as immovable property. It was contended by the Appellants that, the property mentioned in Schedule-II of the plaint was the self-acquired property of deceased Jaisingh Rao. During his lifetime, Jaisingh Rao has partitioned and allotted his entire property to his sons. Accordingly, same arrangement was made by him in the 'Will Deed' dated 8th February 1984, which was registered. The scheme mentioned in the 'Will' was acted upon and each member of the family is in possession of the property as per the scheme. In view of the said 'Will', Plaintiff No.1 is the absolute owner of the property mentioned in Schedule-I of the plaint.

4. Respondent Nos.1 and 2 had filed their written statement at 'Exhibit-72/A', contending that, Respondent No.1 has paid 1/3rd

consideration for purchase of the agricultural land at Shirur. The said land was forfeited to the Government, under Section 8(c) of the Bombay Tenancy and Agricultural Lands Act, 1948. Respondent No.1 had preferred Appeal against the order of forfeiture, which was decided in his favour on 25th November 1991. Accordingly, the name of the Government was deleted from the 'Record of Rights'. In the year 1987, the Government acquired certain land for the purpose of Pune-Nagar High-way. Respondent No.1 got 1/3rd compensation out of total compensation. It was submitted that, the 'Will' was not acted upon and Jaisinghrao had no authority to make partition by way of executing 'Will Deed'.

5. Respondent No.3 has contended that, the suit properties are the ancestral and joint family properties and there was no partition during the lifetime of deceased Jaisinghrao.

6. Respondent No.4 has contended that, the 'Will Deed' dated 8th February 1984 was revoked by Jaisinghrao and subsequent 'Will Deed' dated 28th February 1988 was executed. By the subsequent 'Will Deed', agricultural land at Shirur was partitioned by Jaisinghrao and 1/3rd share in the said land was allotted to Appellant No.1 and Respondent No.1, respectively, and the remaining 1/3rd share in the said land was allotted to Respondent Nos.3, 4 and Shakuntala, the wife of deceased

Jaisinghrao. Respondent No.4 has further contended that, the 'Will Deed' dated 8th February 1984 was made against the wish of Jaisinghrao and she has not received antique articles and cash amount in the said partition. According to her, as the suit property was acquired out of the joint family funds, her father Jaisinghrao had no right to execute the 'Will Deed'.

7. Both the Trial Court and the first Appellate Court have, on the basis of these pleadings, framed the requisite issues and points respectively. They have considered, in detail, the evidence adduced on record by the parties and it was found that, deceased Jaisinghrao had independent source of income. He was doing service in 'Deenbandhu Press' on honorarium of Rs.500/- and was working in Royal Western India Turf Club. He was also carrying on lodging business at three places. It was also found that, Lodging License was in his name. His Chartered Accountant and Legal Advisor, Mr. Prakash Kulkarni, was also examined to prove that deceased Jaisinghrao has filed Income Tax Return in his individual capacity and not as 'Karta' of Hindu Undivided Family. Consideration of the land at Shirur was shown in the Income Tax Return. He has thus purchased the suit properties out of his own income and they were his self-acquired properties. Both the Trial Court and the first Appellate Court have also appreciated the entire evidence on record in respect of the 'Will Deed' and found that, PW-2 Prakash Kulkarni was

'Executor' of the said 'Will' and Appellants were aware about the execution of the 'Will'. They had applied for it after eight months from the death of Jaisinghrao. They had received it on 1st March 2004, as admitted by Appellant No.1. However, they have not filed Suit within three years therefrom. Hence, the Suit is rightly held to be barred by the limitation. Thus, on the basis of the appreciation of entire evidence on record, both the Courts below have arrived at their independent findings, which has resulted into dismissal of the Suit and again in the dismissal of the Appeal.

8. Even a cursory perusal of the Judgments of the Trial Court and the first Appellate Court goes to show that, everything depends upon the appreciation of evidence and no question of law, far remain, any substantial question of law, was raised either before the first Appellate Court or even before this Court.

9. In view thereof, in the Second Appeal, this Court cannot convert itself to a third Court of fact finding and enter into re-appreciation of evidence on record, to test the soundness of the conclusions arrived at by the Trial Court and confirmed by the first Appellate Court. Thus, the Second Appeal does not raise any substantial question of law; hence, it, being devoid of merits, stands dismissed.

10. In view of dismissal of the Second Appeal, Civil Application No.729 of 2018 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]