

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

*SECOND APPEAL NO.540 OF 2015  
WITH  
CIVIL APPLICATION NO.1195 OF 2015  
IN  
SECOND APPEAL NO.540 OF 2015*

Atmaram Purushottam Patil ..Appellant / Applicant.

V/s.

M/s. Kesar Enterprises Ltd. & ors. ..Respondents.

Mr.Sagar G. Talekar for the Appellant / Applicant.

Mr.J.A.Udaipuri I/b. M/s.Udaipuri & Co. for Respondent no.1.

***CORAM : N.M. Jamdar, J.***

***DATED : 9 January , 2018.***

**ORAL ORDER**

. By this second appeal, the Appellant-Original Plaintiff has challenged the Judgment and Order passed by the learned District Judge, Palghar dated 20<sup>th</sup> March 2015 in Civil Appeal No. 177 of 2006. The learned District Judge by the impugned Judgment and Order allowed the appeal and set aside the Judgement and Order passed by the learned Civil Judge, Senior Division, Palghar dated 6<sup>th</sup> October, 2016 in Special Civil Suit No.76/1998.

2. The Appellant filed a suit taking exception to a sale deed daed 24<sup>th</sup> December, 1996 executed by deceased Sukribai Nathu Raut in favour of Defendant nos.1 and 2. The Appellant sought an order of injunction to restrain Defendant nos.1 and 2 from putting up any construction over the suit land. The learned Civil Judge decreed the suit and set aside the sale deed and in the Civil Appeal filed by the Appellant, the learned District Judge set aside the said decree by the impugned order.

3. Admittedly the land was owned by the deceased Sukaribai who has sold the land in favour of defendant nos.1 and 2 on 24<sup>th</sup> December, 1996. Unless the appellant is able to establish any right to the suit property he will not be entitled to seek setting aside the sale deed.

4. The sole contention of the learned counsel for the Appellant, which was the foundation of the Appellant's case in the Courts below, is that the Appellant, being an adjacent owner, is entitled to purchase the land under section 7 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947(for short, "the Act of 1947").

5. Section 7 of the Act of 1947 states that no person shall transefer any fragment, except to the owner of contiguous survey number. However, section 7 of the Act of 1947 does not confer any

absolute right in all circumstances upon the owner of the contiguous survey number. Section 7 has to be read with the provisions preceding it. Section 5 contemplates revision of the area, which the State Government has to determine after considering the objections. Thereafter a notification has to be published. After the notification, an entry has to be made in the Record of Rights. Notice of entry has to be given in the manner prescribed under the Act. It is upon completion of this procedure that a land is treated as fragement, and section 7 of the Act of 1947 is attracted.

6. The learned District Judge found that there was no such notice under section 6(2) of the Act of 1947, neither there is any entry made in the Revenue Record. The Appellant did not offer to purchase the land and infact made a categorical statement in the evidence that he does not wish to purchase the land. A finding of fact has also been recorded by the learned District Judge that the Appellant is not a owner of the contiguous survey number. Nothing is shown as to how this factual finding is incorrect. Once this position is established, it cannot be said that section 7 of the Act of 1947, was attracted.

7. No question of law arises in this Second Appeal. Second Appeal is dismissed.

8. Civil Application stands disposed of.

*(N.M. Jamdar, J.)*