

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 687 OF 2013
WITH
CIVIL APPLICATION NO. 1615 OF 2013
IN
SECOND APPEAL NO. 687 OF 2013

Bhagwat Ramchandra Chaudhari
(since deceased through LRs)
Chandrakala Bhagwat Chaudhari & Ors.Appellants

Versus

Sitabai Narayan Beturkar & Ors.Respondents

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Mr. R.V.Govilkar I/b. Mr. Himanshu B. Takke for the Appellants.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATED: MARCH 19, 2018

P.C. :

1. This Second Appeal is directed against the judgment and order dated 23rd January, 2013 passed by the learned Ad-hoc District Judge-1, Kalyan in Civil Appeal No. 80 of 2008 thereby confirming the judgment and order dated 7th August, 2008 passed by the learned Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No. 103 of 2001.

2. The original deceased plaintiff had filed the suit for specific performance of contract and injunction. It is the case of the plaintiffs that the original defendant nos. 1 to 5 were the owners of the plot bearing no. 44 admeasuring 359 sq. yards equivalent to 300 sq.meters, out of Survey No. 28, Hissa No.4 situated at Gandhare Village, Taluka Kalyan. The original deceased plaintiff had purchased the said plot from defendant nos. 1 to 5 by way of Registered Sale Deed dated 3rd July 1984. At the time of execution of the said Sale Deed, the survey number was wrongly mentioned as Survey No. 30, Hissa No. 3 instead of Survey No. 28, Hissa No. 4 and, therefore, a Deed of Correction was executed on 23rd April, 1986 between the original deceased plaintiff and defendant nos. 1 to 5. After correction, the parties agreed that plot no. 44 is from Hissa No. 4, Survey No. 28 of the same village Gandhare, Taluka Kalyan. It is the case of the plaintiffs that as the original deceased plaintiff had executed the registered Sale Deed; it is the Office of the Registrar, who has to forward the registered Sale Deed for mutations in the revenue record. However, the Office of the Registrar failed to do so and the names of the vendors i.e., defendant nos. 1 to 5 remained as the owners of the

suit land. The original deceased plaintiff is in possession of the suit land immediately after execution of the Sale Deed. However, the original deceased plaintiff had knowledge that the vendors i.e., defendant nos. 1 to 5 have entered into another registered Sale Deed dated 3rd December, 1999 in respect of the suit land with defendant no. 6 / builder and, therefore, the appellants/ plaintiffs filed the suit for specific performance against defendant nos. 1 to 5.

3. The learned Counsel for the appellants/plaintiffs submitted that the learned Judges of the Trial Court as well as the Appellate Court have committed error in appreciating the evidence of the plaintiffs on the point of description and proper identification of the suit plot. He further submitted that the plot no. 44 is a same plot, however, Survey Nos. 26 and 30 were amalgamated in a common plot by the Office of the Tahsildar, Kalyan. He argued that the learned Judges of both the Courts ought to have considered the registered Sale Deed. By way of registered Sale Deed, the plaintiffs are in possession of the suit plot and the said plot was purchased for consideration of Rs. 7898/-. He further submitted that whether the Trial Court has failed to appreciate the evidence

on the point of identification of the suit plot is a substantial question of law.

4. Heard submissions. Perused the judgments of the Appellate Court and the Trial Court so also registered Sale Deed dated 3rd July 1984, which was executed between the original deceased plaintiff and defendant nos. 1 to 5 and also registered Sale Deed dated 3rd December 1999, which was executed between defendant nos. 1 to 5 and defendant no.6. Perused letter of March, 2008 written by the Circle Officer, Kalyan to the Tahsildar, Kalyan. This letter shows that defendant nos. 1 to 5 have sold same property to the original deceased plaintiff as well as defendant no. 6 and, therefore, directed some enquiry in the matter. On query, I am informed that the plaintiffs have examined one witness Bansi Gadekar, who has proved the Sale Deed. The plaintiffs have not proved lay out plan independently. On the point of description and identification of the suit plot, it was necessary on the part of the plaintiffs to lead proper evidence from the Offices of the Tahsildar and Revenue Department. However, it appears that the plaintiffs did not tender the required and sufficient evidence to enable the Trial Court to assess the evidence accordingly. The Trial Court

has framed twelve issues and issue no. 8 is as follows :

“8. Does the defendant No. 6 proves the Plot no. 44 in Survey No. 26, Hissa No. 6 of village Gandhare is not part and parcel of the suit property?”

5. The Trial Court after considering the evidence, has answered in affirmative. In para no. 33 of the judgment, the Trial Court has considered the evidence in respect of fixing identification of the plot and property purchased by defendant no. 6. As per description of the suit property in the plaint, the original deceased plaintiff had purchased the plot bearing no. 44 admeasuring 359 sq. yards equivalent to 300 sq.meters, out of Survey No. 28, Hissa No.4 situated at Gandhare Village, Taluka Kalyan. Defendant no.6 had purchased plot no. 44 admeasuring 1500 sq. meters, out of Survey No. 26, Hissa No. 6. Thus, plot no. 44 is a common figure of those suit plots, but survey and hissa numbers are different. The plot purchased by the original deceased plaintiff is from Plot No. 44 out of Survey No. 28. However, the plot purchased by defendant no. 6 is from Plot No. 44 out of Survey

No. 26. Thus, the description of the suit plots in the registered sale deeds is different.

6. The learned Counsel for the appellants argues that while plotting, there was confusion of marking and amalgamating and that evidence should have been appreciated by the Trial Court.

7. However, as stated above, the plaintiffs should have tendered such evidence before the Court to enable the Court to arrive at a certain conclusion, which was intended by the plaintiffs. In view of this, I do not find any substantial question of law, hence Second Appeal is dismissed.

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

(MRIDULA BHATKAR, J.)