

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.136 OF 1994

Dinkar Dada Pawar ... Appellant
 Versus
 Dadasaheb s/o. Yashwant
 Pawar
 And Another ... Respondents

Mr. S.G. Surana for the Appellant.
Mr. Shankar P. Thorat for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 4 NOVEMBER 2019

ORDER :

. Heard learned Counsel for the parties.

2 This Second Appeal challenges an appellate judgment passed by the District Judge at Satara in a regular civil appeal. The impugned order dismissed the appeal filed by the Appellant herein. The Second Appeal has been admitted on the following substantial questions of law :

(5) Whether both the courts below have committed an error in holding that the sale-deed dated 10 December 1981 executed by Respondent No.2 in favour of the Appellant, is null and void and not

binding on Respondent No.1 ?

(8) Whether the Appellant proved his exclusion possession over the suit plot on the basis of a *visar-pavati* dated 11 November 1978 and the registered Agreement to Sale dated 9 January 1980 and the registered Sale-deed dated 10 December 1981 ?

(9) Whether both the courts below have committed an error in ignoring the Appellant's documents, i.e. registered Agreement to Sale deed dated 10 December 1981 executed by Respondent No.2 in favour of the Appellant ?

3 The Appellant was original defendant no.1 in a suit filed by Respondent No.1 (original plaintiff), arraigning him and Respondent No.2 (original defendant no.2) as defendants. Defendant no.2 was the owner of the suit property. By a *visar-pavati* followed by an agreement for sale executed on 9 January 1980, defendant no.2 agreed to sell the property to defendant no.1. Subsequently, by a registered sale deed executed in favour of the plaintiff on 23 October 1981, defendant no.2 conveyed the suit property and some other properties to the plaintiff. It appears that defendant no.2 thereafter (i.e. on 10 December 1981) executed a registered sale deed in respect of the suit property in favour of defendant no.1. This prompted the plaintiff to file a suit, being Regular Civil Suit No.16 of 1982, seeking a declaration of nullity of the subsequent sale deed executed by

defendant no.2 in favour of defendant no.1 and a perpetual injunction restraining the latter from causing any obstruction to the plaintiff's peaceful possession of the suit property. The suit was contested by defendant no.1. By their concurrent findings of fact, the trial court and the first appellate court both held that the plaintiff had proved that the sale deed of 10 December 1981 executed by defendant no.2 in favour of defendant no.1 was null and void and not binding on the plaintiff. The courts also rejected the defendants' case that the suit property was included in the sale deed of 23 October 1981 executed by defendant no.2 in favour of the plaintiff fraudulently. Both courts also held that the plaintiff had proved his exclusive possession of the suit property on the basis of his title.

4 These are essentially matters of fact, on which the courts below have concurrently held in favour of the plaintiff. There is nothing to show that the judgments and orders passed by the courts below are either not supported by evidence or that they have been delivered by disregarding any relevant or germane material or circumstance, or by taking into consideration any irrelevant or non-germane material or circumstance. The trial court has taken into account the oral testimony of defendant no.2 that he had sold the suit property to the plaintiff for Rs.10000/-; the plaintiff had paid Rs.8064/- in the bank towards his outstanding loan and remaining amount to him in cash. The registered sale deed in favour of the plaintiff was proved before the court. After analyzing his testimony, the court was of the view that the evidence on record clearly went on to show that on 23

October 1981, the plaintiff had purchased the suit property from defendant no.2 for valuable consideration and that the plaintiff was a *bona fide* purchaser of the suit property for value and without notice. So far as the so-called prior agreement of defendant no.1, namely, the *visar-pavati* and the agreement for sale, is concerned, the trial court did not find the same to be genuine documents. The trial court found that a portion of the alleged agreement in favour of defendant no.1 (*sathe khat* of 22 November 1978) was added subsequently in different ink; the three documents set up by defendant no.1 in this behalf (including the alleged registered agreement for sale dated 9 October 1980) gave three different dates when possession of the suit property was said to be delivered by defendant no.2 to defendant no.1. The trial court held that delivery of possession to defendant no.1 was not proved. The appellate court did not find fault with the conclusions; it affirmed that the plaintiff's agreement and sale deed as also his possession were proved and neither the prior agreement nor possession of defendant no.1 was proved. The conclusions of the courts below are clearly possible conclusions and do not make out any case of perversity. There is no case of an error apparent on the face of the record in passing the impugned judgments and orders or failure to exercise jurisdiction or any other error of jurisdiction in them. The questions of law framed in that behalf, on which the present appeal was admitted, are accordingly answered in the negative and the Second Appeal is dismissed.

(S.C. GUPTE, J.)