

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 512 OF 2014

Subhash Sahadu Chaudhari

.....Appellant

V/s.

Shri. Pandurang Kashinath Rane
and Ors.

....Respondents

* * * *

Mr. Chandrakant Chavan, Advocate for the appellant.

Mr. Tejas Deshmukh, Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Friday, 12th April, 2019.

P.C. :

1. This Appeal is preferred by the original defendant no.3 against the judgment and decree dated 30th December, 2013 passed in the Regular Civil Appeal No.687 of 2002 by the learned District Judge, Pune.

2. The facts in brief are as under :

. Respondents no.1 to 7 had filed a suit for partition against his brother and his son who were

defendants no.1 and 2. Defendant no.3(appellant herein) is purchaser of the suit property. Defendants no.4 and 5 are the tenants who were occupying two tenements in the suit property. Defendants no.6 and 7 are the cousins of the plaintiffs. Both the Courts concurrently held that the character of the suit property is joint family property and sale-deed executed by defendant no.1 dated 17th July, 1994 in favour of the defendant no.3 in respect of the suit property is illegal and not binding on the shares of the plaintiffs and defendants no.6 and 7.

3. Kashinath, common ancestor died leaving behind him Pandurang, Yashwant, Shantaram, Vasant and Mandakini as his heirs. Suit is filed by the branch of Pandurang, Yashwant and Mandakinii. The suit property is land bearing Survey No.2305 which was admittedly purchased by Kashinath, in the year 1937. Kashinath died in February, 1959. However, it is case of the defendant no.1 that, consideration of Rs.60/- for purchasing the suit property was paid by him, though it was purchased in his father's name. It is his case that, neither his father nor his

brother had source of income to purchase the suit property. He would therefore contend that, it is his self-acquired property. It is his case that, in the year 1954, a chawl was constructed on the suit land by him and therefore the entire suit property, though stood in the name of his father, it is he who has purchased it from his independent income. It is in these circumstances, he would contend, being owner of the suit property he sold it to the defendant no.3 (appellant herein) by registered sale-deed dated 17th July, 1994. He has thus denied the right of the plaintiffs to claim share in the suit property.

4. The defendant no.3, purchaser of the suit property would contend that, he was a bonafide purchaser for value without notice and on this ground resisted the suit and denied the claim for the partition.

5. The evidence on the record reveals that, the defendant no.1 did not step into the witness box though he was alive at the given point of time. He did not explain the circumstances which compelled him to purchase the suit property in his father's name. Infact, there are no pleadings

as to why he chose to purchase the property in his father's name. Admittedly, in the year 1937, the defendant no.1 was attending the school and therefore both the Courts correctly discarded his defence and contention. Besides, there is evidence on record which indicates that, Kashinath and one of his sons had independent source of income and name of Kashinath was also recorded in revenue records. The revenue entry dated October, 1985 (Exhibit-99) shows, after the demise of Kashinath, names of his two sons, Shantaram, Pandurang and the heirs of deceased Yash and Vasant were recorded alongwith the daughter, Mandakini. This revenue entry coupled with the other evidence on record, has established the fact that the suit property was self-acquired property of Kashinath and after his demise, his four sons and daughter have right to claim one-fifth share each therein. Thus, the findings rendered by the Courts below are consistent with the evidence on record and nothing has been pointed out to show that the findings are perverse and/or rendered in exclusion of any piece of evidence.

6. Appellant-defendant no.3 attempted to explain that suit property was the self-acquired property of the defendant no.1. His evidence has revealed that, he was born in the year 1950 at Taluka-Chaalisgaon, whereas, it was purchased by Kashinath in the year 1937. Obviously, he had no personal knowledge, as to how and from whose funds, the suit property was purchased by Kashinath.

7. Thus, taking into consideration, the facts of the case and evidence on record, the essential challenge in this Appeal is to the findings of fact. The Appeal, therefore does not give rise to any substantial question of law. The Appeal is accordingly dismissed.

(SANDEEP K. SHINDE, J)