

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

**SECOND APPEAL NO.472 OF 2017
WITH
SECOND APPEAL NO.408 OF 2017
WITH
CIVIL APPLICATION NO.643 OF 2017**

Mr. Mahadu Bhau Sabale ... Appellant
Vs
Mr. Jayram Bala Bhosale & Ors. ... Respondents
...
Ms. Anjali Neel Helekar for the Appellant.
Mr. Madhav J. Jamdar for the Respondent Nos.1 to 5.

CORAM : SANDEEP K. SHINDE J.
DATE : 22 JANUARY, 2019

P.C. :

Both the appeals are preferred by the defendant in Regular Civil Suit No.13 of 2005. The Plaintiffs-Respondents had filed this suit for declaration of their title in respect of the suit property and for perpetual injunction against the defendant. The trial Court dismissed the suit and held that the sale deed dated 9th March, 1984 on the basis of which plaintiffs sought declaration and possession in the suit property was not a valid sale deed. However, the trial Court held that

the plaintiffs were in possession of the suit property as on the date of the suit. Decree of the trial Court was challenged by the plaintiffs in Civil Appeal No.702 of 2010. In this Civil Appeal, the defendant had filed the cross-objection in respect of the finding recorded by the trial Court relating to the possession of the plaintiffs in the suit land. It may be stated that the defendant had not filed counter claim in the suit. The appellate Court modified the decree of the trial Court and injuncted defendant from disturbing possession of the plaintiffs in the suit land. Cross-objections filed by the defendant were rejected by the judgment and order dated 14th November, 2016. It is against this judgment and decree, the defendant has preferred these two Second Appeals; one against decree of injunction passed by the appellate Court and another against dismissal of the cross-objections filed by the defendant.

2 *The learned counsel for the appellant submitted that the suit land was subject to the provisions of Re-settlement Act and having not obtained permission from the Competent Authority, the sale deed which was executed in favour of the plaintiffs by Saibai, mother of the*

defendant in March, 1984 was void sale deed. It is contended that possession claimed by the plaintiffs on the basis of such a void sale deed cannot be sustained. It is submitted that attempt made by the plaintiffs to record their names in revenue record to the suit property was declined by the authorities. It is further contended that the sale deed was executed in the year 1984. However, possession was never delivered to the plaintiffs. It is further contended that the suit was filed in the year 2005. The learned counsel also submitted that the appellate Court has committed an error by granting decree of perpetual injunction on the basis of void sale deed. It is further submitted that the suit was barred by limitation in-as-much as the sale deed was executed in the year 1984 and the suit for declaration of title was filed in the year 2005. It is submitted that the appellate Court has not rendered finding on this issue. It is not in dispute that the suit land was subject to the provisions of the Re-settlement Act. In March, 1984, defendant's mother sold the suit land to the plaintiffs vide registered sale deed. It is the plaintiffs' case that since 1984, they are in possession of the suit land. The plaintiffs had produced sale deed on record at Exhibit 99. The

appellate Court recorded the finding of fact that in the sale deed it was recorded that the mother of the defendant Saibai had actually delivered possession of the suit property to the plaintiffs. More so, it appears that the plaintiffs had examined two witnesses who had deposed that the plaintiffs are in possession of the suit land. In view of this fact, the appellate Court has recorded the finding in favour of the plaintiffs and restrained the defendant from disturbing his possession over the suit land.

3 The only contention raised by the appellant is that entry of plaintiffs in the suit land was based on void contract in-as-much as sale deed allegedly executed by his mother was contrary to the provisions of the Re-settlement Act.

4 Be that as it may, the factum of possession has been proved by the plaintiffs on the basis of documentary and oral evidence. Admittedly, the defendant has not filed counter claim but merely filed cross-objections as against the findings recorded by the trial Court in

favour of the plaintiffs in respect of their possession. In the circumstances, in the absence of any counter claim for possession, the contention of the appellant that the possession cannot be held to be valid on the basis of void contract would not change fact situation. That so far as the issue of limitation is concerned, it appears that the plaintiffs' name in revenue record was declined by the authorities in the year 2001. It further appears from the pleadings in the plaint that the defendant attempted to obstruct possession in the suit land. The suit was filed immediately thereafter, i.e., alleged obstruction by the defendant. In the circumstances, it cannot be said that the suit for perpetual injunction was barred by the limitation.

5 *Considering the facts of the case, in my view, appeals do not give rise to any substantial question of law and they are accordingly dismissed and the Civil Application is disposed of.*

(SANDEEP K. SHINDE, J.)