

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 516 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 1048 OF 2016**

Ashok Panurang Parit

.....Appellant

V/s.

Smt. Ranjana Rangarao Parit
and Ors.

....Respondents

* * * *

Mr. T.S. Ingale a/w. Mr. Nikhil Pawar, Advocate for the
appellant.

Mr. Bhushan Walimbe, Advocate for respondents no.1 to 4.

Mr. Rupesh K. Bobde, Advocate for respondent no.5.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 10th January, 2019.

P.C. :

1. That vide judgment and decree dated 12th February,
2007 decree of possession of suit property was passed
against the defendants. This decree was carried in Appeal.

However, the Appeal was dismissed by the learned District Judge-II, Islampur vide judgment and order dated 2nd April, 2016. Aggrieved by it, the original defendant has preferred this Second Appeal.

2. Heard learned Counsel for the parties.

3. Perused the compilation of documents consisting of the notes of evidence. The parties are hereinafter referred to as by the same status as they were before the trial Court.

4. The suit for possession on title was filed by the plaintiffs. It is the plaintiff's case that vide lease deed dated 20th February, 1992, Islampur Municipal Council executed a lease deeds in favour of one, Rangrao (husband of plaintiff no.1), the predecessor of the plaintiffs in respect of Plot No.12 corresponding Revision Survey No. 3 at Islampur, Taluka-Walwa, District-Sangli for the period of 99 years upon certain terms and conditions. One of the conditions was that the lessor shall not transfer, alienate and/or sell

the plot to any person and if such alienation is made, the Corporation shall have a right to take possession of it. Rangrao, died on 26th February, 2003. The plaintiffs who are the heirs of Rangrao called upon the defendant who is the brother of Rangrao to handover vacant possession of the plot. The defendant refused to accede to the request and hence suit was filed in the year 2007.

5. The learned trial Judge, after appreciating the evidence recorded the finding that the defendant had not produced any document to show as to on what basis he is in possession of the suit property. It is the defendant's case, that Rangrao during his lifetime had executed a document (Sanmati Patra) on 27th November, 1997 whereby Rangrao had relinquished rights in the suit plot in his favour. It is the defendants case that, on the basis of this document, he is in possession of the suit property and later constructed house thereon. The contention of the defendant was not accepted by the trial Court on the ground that the said Samathi Patra cannot be read into evidence being not duly

stamped and being an unregistered document. The trial Court thus held, the possession of the defendant in the suit property is illegal and thus passed a decree by directing the defendant to handover peaceful possession of the suit property. The Appellate Court confirmed the findings of the trial Court and upheld the decree. The Appellate Court has gone a step ahead by recording a finding of fact that the execution of the so called Samathi Patra is not free from doubt. The Appellate Court found that, the signature of Rangrao on the said Sanmati Patra does not tally with the admitted signature of Rangrao. The Appellate Court therefore recorded a finding that Sanmati Patra and the Affidavit allegedly executed by Rangrao during his lifetime was not free from doubt and thus declined to rely on the said Sanmati Patra.

6. Mr. Ingale, the learned Counsel for the appellant submitted that, though Sanmati Patra is unregistered document, it can be read for collateral purposes. There cannot be any dispute on this submission. However, the

plaintiffs had filed a suit for possession on title and relied on the lease deed executed by the Council in favour of her husband. The Appellate Court has recorded a finding of fact that, the execution of Sanmati Patra is free from doubt. Even otherwise, the defendant is assailing his right in the suit property only on the basis of the said Samathi Patra. Admittedly, this document is neither properly stamped nor it is a registered one. In view of this fact, the Courts below have rightly not read the same in evidence on the basis of which the rights were claimed by the defendants. Mr. Ingale has taken me through the compilation of documents and urged that even during the lifetime of Rangrao, defendant was paying the property taxes to the Municipal Council as evident from tax receipts. However, such receipts are hardly of any use and could be taken into consideration for holding rightful possession of the defendant. Thus, considering the facts of the case and the evidence on record, in my view, the Appeal does not give rise to any substantial question of law. The Appeal is therefore dismissed with no order as to costs.

7. In view of dismissal of the Appeal, Civil Application No. 1048 of 2016 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)