

DDR

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

**SECOND APPEAL NO. 510 OF 1996
WITH
CIVIL APPLICATION NO. 6736 OF 1996
IN
SECOND APPEAL NO. 510 OF 1996**

Pratibha Prabhakar Patil & anr. ..Appellants
vs.
Parshuram Narayan Patil ..Respondent

....

None for appellants. (Ms. Tanaya Goswami assisted the Court.)
None for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 25th JULY, 2019

P.C. :

None appeared on behalf of the parties.

2. The Appeal is of the year 1996. I therefore requested Ms. Tanaya Goswami to assist this Court. She was gracious enough to accept this request.

3. The Appeal was admitted on the following substantial question of law :

“Whether the Gift Deed is valid or not ?”

4. The appellants are the original defendants. The plaintiff - present respondents filed the suit for relief of permanent injunction and mandatory injunction against the defendants. The plaintiff is a real brother of the defendants. The joint family properties were partitioned on 2/12/1977 during the lifetime of their father. In so far as disputed portion is concerned, it is alleged by the plaintiff that defendant No.1 in collusion with defendant No.2 carried out construction of 20 x 21 ½ feet of the plinth and was intending to construct the house thereon. According to the plaintiff, the property in question was kept in common pool between the plaintiff and the defendants. The defendants came out with the case that the suit plot was gifted to defendant No.1 by her mother by registered Gift Deed dated 1/6/1984 and consequently she became absolute owner of the suit plot. It appears that during the

pendency of the proceedings before the Appellate Court the defendants carried out construction on the suit property. The Appellate Court had remanded the matter to the trial Court when further relief of demolition of the structure in question which was constructed during the pendency of the Appeal was also sought. The Courts below held that the Gift Deed executed by the mother in favour of defendant No.1 is not proved. The Gift Deed is at Exhibit 112. The defendants did not examine any attesting witness or even the scribe of the Gift Deed. The Courts below found that the evidence adduced by the defendants is not sufficient to prove the Gift Deed.

5. After perusing the pleading and evidence on record, I do not find any reason to interfere with the findings recorded by the Courts below that neither the plaintiff nor the defendants had proved that they are exclusive owners of the suit property. Their father - Narayan Patil has four daughters and two sons. The mother of the plaintiff died in the year 1992. In these circumstances, the Courts below held that all the legal heirs are

the co-sharers in the suit property. The construction carried out by defendant No.1 was at her own risk during the pendency of the Appeal.

6. Considering all these aspects, it is not possible to take any other view than one taken by the Courts below. The Appeal is dismissed.

7. I place on record my appreciation for the assistance rendered by learned Counsel Ms. Tanaya Goswami.

8. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)