

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

**SECOND APPEAL NO. 171 OF 2019
WITH
CIVIL APPLICATION NO. 186 OF 2019**

Pramod Krushnarao Ghatage ... Appellant
Versus
Krushnarao Kabajirao Ghatage and others ... Respondents

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Mr. Sanjiv A. Sawant for the Appellant.
Mr. Sushant Prabhune for Respondent Nos. 2 and 3.

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CORAM : SANDEEP K. SHINDE, J.

DATE : 26th FEBRUARY, 2019.

P. C.:

1. Heard learned Counsel for the parties.
2. I will refer the parties as per their status in the suit.
3. Appellant is the plaintiff, who had filed Special Civil Suit No.267 of 2011 before the learned Civil Judge, Junior Division, Baramati, for partition of the property, which is a bungalow, described in paragraph 1 of the plaint and also for declaration that the sale-deed executed by his father in respect of the suit property in favour of defendant Nos. 2 and 3 is not binding on his share in the said property. The plaintiff also sought decree of injunction restraining defendant Nos. 2 and 3 from taking possession. Other ancillary reliefs were in the nature of restoration of electricity supply which was allegedly

disconnected at the instance of defendant Nos. 2 and 3. The suit was dismissed and Regular Civil Appeal No.148 of 2016 preferred by the plaintiff also met with the same fate. It is against the decree in Regular Civil Appeal No.148 of 2016 dated 4th July, 2018, passed by the District Judge-3, Baramati District Pune, this Second Appeal is preferred.

4. Learned Counsel for the appellant has tendered compilation of documents. I have perused the same as well as the judgments passed by the Courts below.

5. The father of the plaintiff had purchased the land in the year 1991 and thereafter constructed residential bungalow. By registered sale-deed dated 31st October, 2010, father of the plaintiff, who was defendant No.1, sold the said bungalow to defendant Nos. 2 and 3 for the consideration of Rs.7,68,000/-. In December 2011, plaintiff has brought the suit for the reliefs as stated herein above. It is plaintiff's case that, for purchasing the land and for constructing the bungalow he expended Rs.4,45,000/-. More precisely, it is his case that while purchasing the plot he had contributed Rs.45,000/- towards its cost and for construction of bungalow plaintiff and his wife have contributed Rs.4,00,000/-. On this count, it is claimed that his father had no

right to sell the bungalow without notice to him. It is his further case that he is in the settled possession of the said house property. On these assertions he filed the suit for declaration that the sale-deed executed by his father on 31st October, 2010 in favour of defendant No.2, is not binding on his share.

6. I have perused the pleadings and particularly, paragraph 3 of the plaint, wherein he had averred that entire cost of construction i.e. Rs.4,00,000/- was paid by him to the contractor Mr. Gawli. It is further pleaded that the said property has not been partitioned.

7. The defendant filed his written statement and raised the counter claim, whereby he sought decree of possession against the plaintiff.

8. Both the Courts have recorded a finding that the plaintiff had failed to prove that the suit property is a 'joint family' property.

9. Learned Counsel for the appellant has taken me through the pleadings and the evidence, to show that he had expended Rs.4,00,000/- for construction of the bungalow and had contributed Rs.45,000/- for buying land on which bungalow is

constructed. That, except a bare statement that he had paid Rs.4,00,000/- to the contractor, no evidence was brought on record. It is at the stage of second appeal, the appellant has produced compilation of documents to show that he has expended and contributed Rs.4,45,000/- towards the suit property. It is contended that the part of the amount was contributed by the plaintiff's wife and in support thereof a statement of bank account is produced along with compilation.

10. In the first place, the appellant could not explain as to why and what prevented him from leading the evidence on this aspect before the trial Court. Be that as it may, I have gone through the compilation. A statement at page No.25 of the compilation shows that the Rayat Sevak Co-operative Bank Ltd., Satara had sanctioned loan of Rs. 24,000/- to the wife of plaintiff and the said loan was repaid by his wife in installments since January-2000. Another statement is at page 26, which shows that Rs.55,000/- loan was sanctioned to the wife of plaintiff and that was repaid by her in installments since December-1996 till June-2001. Even assuming, this loan was obtained by plaintiff's wife, but there is no evidence at all to show that this amount was expended for construction of bungalow. The fact cannot be overlooked that Rs.24,000/- were sanctioned to the wife of plaintiff in the year

2000, whereas construction had commenced since 1993 onwards. Therefore, these documents no way advance the plaintiff's case, to say that he had contributed substantially for developing the suit bungalow. Learned Counsel for the appellant has also relied upon some vouchers, which is part of compilation. However, these vouchers do not show that this amount was paid by the plaintiff to the contractor.

11. Thus, taking into consideration the evidence on record, in my view the findings of fact recorded by the Courts below is consistent with the evidence and therefore no interference is called for. It is therefore to be held that plaintiff had failed to establish his 'right' in the suit property. In my view both the Courts have rightly declined to grant declaration in favour of the plaintiff that the sale-deed dated 31st October, 2010 executed by his father in favour of defendant Nos. 2 and 3 was illegal and not binding on him.

12. Learned Counsel for the appellant contended that in the counter claim defendant Nos. 2 and 3 sought the decree of possession, not on the basis of the title but on the alleged illegal dispossession. I do not see any substance in this argument. The prayers in the counter claim is that decree of possession be

passed against the plaintiff and accordingly the Courts after appreciating the evidence has granted counter claim and directed the plaintiff to hand over possession of the suit property to defendant Nos. 2 and 3.

13. Learned Counsel for the appellant has relied on the judgment in the case of Rame Gowda (Dead) By LRs. Vs. M. Varadappa Naidu (Dead) By LRs and another reported in (2004) 1 SCC 769. In the said case the plaintiff had filed the suit alleging his title and also his dispossession over the suit land. The Trial Court found that although the plaintiff had failed in proving his title, he had succeeded in proving his possession over the suit property which he was entitled to protect unless dispossessed therefrom by due process of law. On this finding the Trial Court issued an injunction restraining the defendant- appellant from interfering with the peaceful possession and enjoyment of the plaintiff-respondent over the suit property. In the context of the facts aforesaid, the Supreme Court has held “what is the possessory title” and the settled possession.

14. In my view, the facts in the cited judgment (supra) are completely different and are not applicable to the facts of the case in hand.

15. Thus, in my view, the appeal does not give rise to any substantial question of law. The appeal is therefore dismissed. In view of dismissal of appeal, civil application does not survive and it is disposed of.

16. At the request of the appellant, ad-interim protection granted by this Court, is extended for a period of six weeks from today.

(SANDEEP K. SHINDE, J.)