

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.32 OF 2021

- 1) Laxman s/o Banshi Awasthi (Died)
Through his L.Rs. -

Heeraprasad w/o Laxman Awasthi
and another.

**= APPELLANTS
(Orig.Plaintiff)**

VERSUS

- 1) Sundarprasad s/o Sureshprasad
Awasthi and Ors.

**= RESPONDENTS
(Orig.Defendants)**

Mr.RD Biradar, Advocate for Appellant/s.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 30th January, 2021.

PER COURT :-

1) Present appeal has been filed by the legal representatives of original plaintiff to challenge the concurrent findings of both the Courts below. Original plaintiff Laxman had filed the suit for declaration and permanent injunction before Civil Judge Senior Division, Latur; bearing Special Civil Suit No.875 of 2012. It was dismissed by learned Joint Civil Judge, Senior Division, Latur on 30-11-2016. The said judgment and decree was challenged by the legal representatives of the plaintiff by filing Regular Civil Appeal No.42 of 2017. It is also dismissed by learned District Judge-1, Latur on 07-10-2019 on merits. Hence this Second appeal.

2) The Plaintiff claimed that he is the owner of land bearing Gat No.127 admeasuring 6 H 38 R situated at village Mahapur, Tal & Dist. Latur. It is his

ancestral property and after his father's death in 1993 and death of mother subsequent to that, a notice was issued by Talathi for effecting mutation on 23-01-2007. Defendant Nos.2 and 3 are real brothers. Defendant No.1 is son of defendant No.2. Defendant No.1 is in military and posted in Jammu-Kashmir. Defendant Nos.2 and 3 stay separately at Harwadi. They have no concern with the suit property, however, they got their names mutated vide M.E. No.654 to the suit property on 24-08-2000 with the help of Talathi. The plaintiff came to know in February 2007 about the sale-deed executed on 04-05-2005 by defendant Nos.2 and 3. Plaintiff's son Hira had filed Special Civil Suit No.33 of 2007 for declaration and injunction; however, it was withdrawn on 25-06-2007 due to the promises given by defendant No.2. In fact, the plaintiff was brought by defendants by misrepresentation and fraud under the pretext of medical treatment and then the sale-deed was got executed. The plaintiff has not received any consideration at that time. He is still owner of the suit land.

3) The Defendants resisted the suit by filing written statement. They denied all the allegations. The plaintiff has sold the suit property to defendant No.1 for legal necessity and received the consideration of Rs.2,00,000/-. They possess the suit property and cultivate it since the date of sale-deed. The legal representatives of the plaintiff have executed relinquishment deed on 17-10-2006. Plaintiff Mangalbai has sold other lands to defendant No.1 on the same day to defendant No.1. Further she has also transferred lands to other persons on 02-08-2005. The suit is barred by principle of *res-judicata*. The plaintiffs had the intention to shift to another village and,

therefore, they have disposed of their entire property.

4) Both the parties have led oral as well as documentary evidence. As aforesaid, the suit as well as appeal came to be dismissed.

5) Heard learned Advocate Shri R.D. Biradar for the appellants. Unless the appellants show that substantial questions of law are arising in the appeal, it is not necessary to issue notice to respondents. Perused the impugned judgments and decrees as well as other documents on record.

6) It has been submitted on behalf of the appellants that both the Courts below have not appreciated the evidence properly. The defendants had got the sale-deed dated 04-05-2005 executed by playing fraud on the original plaintiff. The said sale-deed was without consideration and, therefore, *void ab initio*. Suit property was the ancestral land of the plaintiff and, therefore, original plaintiff alone had no authority to sale the land. Proper procedure was not adopted while effecting the mutation entry. Both the Courts below failed to consider the evidence that original plaintiff was taken, under the pretext of giving medical treatment, to Latur and then sale-deed has been got executed from him. Substantial questions of Law are arising in this case and, therefore, he prayed for admitting the appeal and issuing notice to the respondents.

7) At the outset it can be seen that the sale-deed dated 04-05-2005 is a registered sale-deed and, therefore, it has certain presumptions. Burden was on the plaintiffs to rebut those presumptions. There is

due endorsement on the sale-deed at Ex.32 by Sub-Registrar. It pre-supposes that the said authority had asked those mandatory questions to the original plaintiff regarding his intention to sell the land and receipt of consideration as stated in the document. No evidence has been adduced in rebuttal to disprove those endorsements. Both the Courts below, after scanning the evidence of PW 6 Dr. Bhoite, have come to the conclusion that plaintiffs have failed to prove that original plaintiff Laxman was simpleton person and was any way suffering from mental illness of any kind. There is no necessity to take a contrary view on that point. Plaintiff No.2 Mangalbai has admitted that she and her brother have sold out all the pieces of land, which were about 20-25 in numbers. They know the procedure at Sub-Registrar's office. Therefore, there was no substance in the allegations that the said sale-deed Ex.32 was got executed by playing fraud.

8) In fact the suit land is Gat No.127 admeasuring 6H 38 R; however PW Mangalbai has admitted that it belonged to common ancestor Hiraprasad. He had two sons, i.e. Bansiprasad and Sundarprasad. The plaintiffs are legal heirs of Bansiprasad and defendant No.2 and 3 are heirs of Sundarprasad. Sundarprasad expired when defendant Nos.2 and 3 were minors. The land, therefore, stood in the name of Bansiprasad. Northern portion of the said land was given in 1979 to defendant Nos.2 and 3 and they are cultivating it independently since then. Therefore, the plaintiffs can not claim that the entire land was their ancestral land.

9) The plaintiffs had failed to prove their ownership over the suit land and then the sale-deed

Ex.32 was got executed from Laxman by playing fraud. Hence, the suit as well as the appeal were rightly dismissed. Detailed analysis of the evidence, adduced by the parties, has been made by both the Courts below. Law points involved have also been properly dealt with. Under the said circumstance, no substantial question of law is arising in this appeal, as contemplated under Section 100 of the Code of Civil Procedure, requiring admission. Hence, the Second Appeal stands dismissed at the threshold.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV