

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.669 OF 2012

SUKHDEO GINANDEO KHADKE
VERSUS
RAMBHAU DNYANDEO KAWALE AND ANR

...
Advocate for Appellants : Mr. Deshmukh Sachin S.
Advocate for Respondent No.1: Mr. R. T. Nagargoje.
R/2 Dead
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-08-2021.

ORDER :

1. The present appeal has been filed by the original plaintiff challenging the concurrent Judgment and decree passed in Regular Civil Appeal No.07 of 2001 by learned District Judge-1, Ambajogai dated 16-12-2011 by which the appeal filed by the appellant challenging the Judgment and decree passed by learned Joint Civil Judge Junior Division, Parli-Vaijnath in Regular Civil Suit No.184 of 1998 dated 21-12-2000 came to be confirmed. By the said Judgment and decree the learned Joint Civil Judge Junior Division, Parli Vaijnath had dismissed the suit of the plaintiff.

2. Heard learned Advocate Mr. S. S. Deshmukh for appellant and learned Advocate Mr. R. T. Nagargoje for respondent No.1.

3. It has been vehemently submitted that both the Courts below failed to consider the facts and circumstances and the law involved in the case. Both the Courts failed to consider that the nature of the sale deed was Sham and bogus and was never acted for a period of 16 years that is since the date of its execution 15-10-1982. The rights of the plaintiff were never taken away. The suit was filed for declaration of nullity of the said sale deed and was for an injunction. In order to prove that the said sale deed is Sham and bogus, the plaintiff has led evidence. Plaintiff is the son of defendant No.2 whereas one late Karbhari who was the father of defendant No.2 had sold out the property to defendant No.1 by executing said sale deed. Karbhari expired but defendant No.1 had not got his name entered to the Grampanchayat. It shows that the sale deed was never acted upon. The suit property was the ancestral property and, therefore, Karbhari could not have any right to sell out the property. This fact has not been discussed properly by both the Courts. Substantial questions of law are involved in the case.

4. Learned Advocate appearing for respondent No.1 supported the reasons given by both the Courts below and submitted that no substantial questions of law are arising in this case.

5. At the outset, it is to be noted that it has not come on record that as to exactly when Karbhari expired. It appears that he never challenged the sale deed during his lifetime. Thereafter, the defendant No.2 had not challenged it. Age of defendant No.2 shown in the suit is 80 years. He has not come with a case that he was not aware about the said sale deed. Under such circumstance, both the Courts below have correctly held that the plaintiff failed to prove that he has any right in the suit property. When the sale deed was executed on 15-10-1982 and the suit was filed on 15-10-1998, it has been rightly held that the suit was barred by limitation in view of Article 58 of the Indian Limitation Act. Both the Courts below have given well reasoned order which is definitely depicting correct appreciation of evidence as well as the legal points. No substantial question of law is arising as contemplated under Section 100 of the Civil Procedure Code requiring admission of the second appeal and, therefore, the second appeal stands dismissed at the stage of admission itself. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-