

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.376 OF 2012

WITH

CIVIL APPLICATION NO.7912 OF 2021

BHAVANJI LAKHAMASI BHATE

VERSUS

SAHEBRAO LALA DESALE AND OTHERS

...

Mr. U.S. Malte, Advocate for the appellant

Mr. S.T. Mahajan, Advocate for respondent Nos.1 to 3

Mr. B.V. Virdhe, AGP for the respondent No.6

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 31st AUGUST, 2021

PRONOUNCED ON : 15th SEPTEMBER, 2021

ORDER :

1 Present appeal has been filed by the original plaintiff challenging the Judgment and Decree passed by learned Adhoc District Judge-1, Amalner, Dist. Jalgaon in Civil Appeal No.22/2006 dated 06.09.2008, thereby allowing the appeal filed by the respondent Nos.1 and 2 herein and thereby dismissing the suit filed by the present appellant-original plaintiff.

2 Present appellant-original plaintiff had filed Regular Civil Suit No.52/2004 before Civil Judge Senior Division, Amalner for cancellation of sale deed and possession. The said suit came to be partly decreed on 25.04.2006. The original defendant Nos.1 and 2 had filed the said Civil Appeal No.22/2006, which came to be allowed by the First Appellate Court. Hence, this Second Appeal by the original plaintiff.

3 Heard learned Advocate Mr. U.S. Malte for the appellant, learned Advocate Mr. S.T. Mahajan for respondent Nos.1 to 3 and learned AGP Mr. B.V. Virdhe for the respondent No.6.

4 It has been vehemently submitted on behalf of the appellant that the First Appellate Court has taken a perverse view while allowing the appeal filed by the original defendant Nos.1 and 2. The appreciation of evidence as well as consideration of law point suffers from legality, when it was properly and legally considered by the Trial Court. The plaintiff had specifically come with a case that the suit property was the joint family property of the plaintiff and defendant Nos.3 to 5 and one another brother by name Somchand. Their father was karta of the family. In the year 1970 their father Lakhamasi borrowed amount of Rs.1,350/- from one Ratanlal Hiralal Jain. Father could not repay the loan and, therefore, Ratanlal had instituted Regular Civil Suit No.20/1973 against plaintiff, defendant Nos.3 to 5 and other family

members. That suit was decreed and the legal heirs of Lakhamasi were directed to pay the amount along with interest. When the said decree was put to execution in Regular Darkhast No.26/1976, the suit property CTS No.79/3 and other four blocks out of CTS No.79/2 were attached. Except the plaintiff, no other family member came forward to save the property and, therefore, plaintiff had deposited amount from his salary to the tune of Rs.2,676/- and saved the suit property as well as another house. According to the plaintiff, since other family members have not come forward, they have lost their right in the suit property and he has become sole owner of the suit property. It is stated that he leased out the suit plot to defendant No.1 on monthly rent in 1978. In the meantime, the defendant No.1 had approached the Court for seeking relief to decide the ownership over the suit plot and on the other hand, the plaintiff had instituted Regular Civil Suit No.240/1987 for possession and arrears of rent, wherein, the defendant No.1 had filed an application for fixation of fair rent. It is further fact that the said suit i.e. Regular Civil Suit No.240/1987 was dismissed, the First Appeal filed by him was also dismissed and now that matter is subjudice before this Court. Thereafter, the defendant Nos.3 to 5 executed sale deed of their undivided share in the suit plot to defendant Nos.1 and 2 on 15.04.2002. Plaintiff protested the said sale deed by moving an application to defendant No.6, but no cognizance was taken. Hence, the suit for cancellation of that

sale deed was filed. The learned Lower Court though held that the plaintiff has failed to prove that the suit property is his self acquired property; yet, it was held that the defendant Nos.3 to 5 have illegally sold the suit property to defendant Nos.1 and 2. It was also held that the defendant Nos.1 and 2 are not the bona fide purchasers for value without notice. Under such circumstance, when the evidence was properly scanned by the learned Trial Judge, it ought not to have been disturbed by the First Appellate Court and, therefore, substantial questions of law are arising in this case.

5 Per contra, the learned Advocate appearing for respondent Nos.1 to 3 supported the reasons given by the First Appellate Court for allowing the appeal and dismissal of the suit. Learned AGP Mr. B.V. Virdhe also submitted that no substantial questions of law are arising in this case.

6 At the outset, the facts are almost not disputed. Even the plaintiff himself is coming with a case that his father had taken loan and in that proceedings against him as well as other legal heirs left by his father, the suit property and another property was attached. Plaintiff deposited the said amount under execution. Naturally, thereafter the properties, those were attached, would have been released. Here, the plaintiff has not come with a case that in the proceedings of execution of the said decree, the suit properties were put to auction and then in the auction put by Court he has

purchased those properties. On the contrary, he comes with a case that he deposited the amount and then the properties have been released. Under such circumstance, it cannot be said that by mere depositing of the loan amount, which was then due of his father, he alone would become owner of the suit property and the other property. At the most, we can say that one of the legal heirs of Lakhamasi has done his pious obligation. At the most, he could have got it recovered from the other heirs to the extent of their share. But then he cannot become absolute owner of the suit property only on the basis of deposit of that decretal amount in the execution proceedings and, therefore, both the Courts below have correctly held that suit property is not the self acquired property of the plaintiff. Conversely, all the legal heirs of Lakhamasi would get their respective shares in the suit property as well as the another property, that was released from the attachment.

7 Defendant No.1 was the person, according to the plaintiff, inducted by him as tenant in the year 1978. Though he might have inducted; yet, taking into consideration the fact that the property belong to the entire Joint Hindu Family, he cannot say that he alone is the landlord of the premises, which were let out to defendant No.1. Further, he had instituted suit for eviction and arrears of rent against defendant No.1. That suit was dismissed. His First Appeal was also dismissed and then it is said that the

matter is subjudice before this Court. That requires no comment in this Second Appeal.

8 The further fact is that the defendant Nos.3 to 5 have executed sale deed in favour of defendant Nos.1 and 2 on 15.04.2002 and it is an admitted position that it is to the extent of their undivided share. Now, it is also to be seen that according to the plaintiff, he had let out the suit plot to defendant No.1. He has not come with a case that a specific boundary within the plot was specified when he let out that piece of land. When the defendant Nos.3 to 5 had right to sell their undivided share in the suit property, it cannot be said that the said sale deed is void. Plaintiff is not party to that sale deed and, therefore, he cannot get it cancelled, unless he shows that there is some legal obstruction in execution of that sale deed. As aforesaid, when defendant Nos.3 to 5 were the joint owners of the suit property and they had the right to sell their undivided share, the appropriate remedy for the plaintiff would have been in some other legal provisions and not by way of cancellation of sale deed and possession. The First Appellate Court has rightly considered all these aspects. The factual aspects as well as legal points have been correctly considered. It leaves no scope for any substantial questions of law, as contemplated under Section 100 of the Code of Civil Procedure Code, 1908 and, therefore, in view of **Kirpa Ram (D)**

through LR_s. and others vs. Surender Deo Gaur and others, 2021 (3) Maharashtra Law Journal, 250, the Second Appeal stands dismissed, at the stage of admission. Civil Application No.7912 of 2021 stands dismissed.

(Smt. Vibha Kankanwadi, J.)

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