

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**28 SECOND APPEAL NO.487 OF 2013
WITH
CA/9263/2013 IN SA/487/2013**

RUKMINBAI LIMBAJI KHATKE
VERSUS
RAGHUNATH NARASAPPA HERKAR AND ANR

...
Advocate for Appellant : Mr. Kulkarni Girish N. (Mardikar)
Advocate for Respondent No.1 : Mr. Warad S. V.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-08-2021.

ORDER :

1. Heard learned Advocate Mr. G. N. Kulkarni for appellant and learned Advocate Mr. S. V. Warad for respondent No.1.
2. Present appeal has been filed by original defendant No.2. Present respondent No.1 is the original plaintiff who had filed Regular Civil Suit No.19 of 2004 before 2nd Joint Civil Judge, Junior Division, Latur for declaration of ownership and possession. It came to be dismissed on 31-08-2009. The original plaintiff then filed appeal bearing Regular Civil Appeal No.165 of 2009 before District Court, Latur. The said appeal was heard by learned Adhoc District Judge-2, Latur and the appeal came to be partly allowed. The Judgment and

decree passed by the lower Court was set aside and substituted. The suit was partly decreed. The plaintiff was held to be the owner of Plot No.78 to the extent of the share of one Subhash Nagnathappa Regude which was sold to the plaintiff by sale deed dated 13-12-1990, excluding the share of Gunderao Narayanrao Kulkarni. Plaintiff was held to be having a right to recover possession in respect of the property of which he is declared owner. Directions were given to the defendants to put the plaintiff in possession of that particular land. Hence, the original defendant No.2 has filed a present second appeal.

3. Learned Advocate for the appellant submits that the First Appellate Court has not appreciated the evidence properly. There were rounds of litigation between the parties earlier. Their vendors were different. The First Appellate Court has not taken into consideration the sale deed dated 29-08-1988 and also the effect of suit that was filed by the present appellant against Gunderao Kulkarni. She had filed Regular Civil Suit No.192 of 1998. That suit was decreed. Said Gunderao Kulkarni had filed Regular Civil Appeal No.50 of 2003 which came to be partially allowed. It was held that Gunderao Kulkarni has an interest in Plot No.78. Present appellant

had come to this Court in the second appeal challenging that decree, however, it was dismissed. Yet the fact remains that the effect of that decree ought to have been taken into consideration by the First Appellate Court and, therefore, substantial questions of law are arising in this case.

4. Per contra, learned Advocate appearing for respondent No.1 supported the reasons given by the First Appellate Court and submitted that no substantial questions of law are arising in this case.

5. At the outset, it is to be noted that the plaintiff i.e. present respondent No.1 was claiming title to a portion of land admeasuring 25 feet X 40 feet out of land Survey No.33 i.e. Plot bearing No.78 which he had purchased from one Subhash Nagnath Regude on 13-12-1990. It was contended by the plaintiff that defendant No.1 in the suit (present respondent No.2) was obstructing his possession over the suit land, therefore he had filed that suit, however, it appears that during the pendency of suit itself, the present appellant came to be added as defendant No.2. After it was pointed out that her Regular Civil Suit No.192 of 1998 was decreed on 11-02-2003, she has taken part in the proceedings.

6. The case was mainly based on the registered documents and also the decrees those were passed by the respective Courts as well as the result in the appeal and, therefore, no detailed discussion was made in respect of the oral evidence. The learned First Appellate Court has taken note of all the earlier transactions and the litigations before arriving at a conclusion that the plaintiff is the owner of the suit plot to the extent of the share of one Subhash Regude. The sale deed in favour of the plaintiff is at Exhibit 44. Thereafter, the copy of the sale deed executed in favour of the appellant appears to have been produced on record. Certified copies of the various Judgments of the earlier litigation have been produced. It is specifically contended in paragraph No.13 that defendant No.2 was claiming her ownership over the suit plot on the basis of a sale deed dated 27-11-1992 which she had purchased from one Prakash Sitaram Pawar. Said Prakash Sitaram Pawar himself had purchased the land by way of the registered sale deed dated 30-07-1991. However, the plaintiff's sale deed on 13-12-1990 being prior in time, it has been held that the predecessors of defendant No.2/present appellant could not have passed better title than they themselves had. The effect of earlier litigation has also been properly considered. It has

been observed that in Regular Civil Suit No.192 of 1998 which was filed by Gunderao against the present appellant, that the suit was decreed and the present appellant was declared as an owner of plots No.78 and 79, so also perpetual injunction was granted against Gunderao Kulkarni. It is also demonstrated as to how Subhash Regude had no right and authority to transfer the title and ownership of Plot No.78 in favour of Prakash Sitaram Pawar. It is to be noted that the present appellant was neither party to the suit that was filed by the present appellant against Gunderao i.e. Regular Civil Suit No.192 of 1998 nor he was party to Regular Civil Appeal No.50 of 2003. Under such circumstances, definitely, those decrees are not binding on the plaintiff herein. Another fact that has come on record is that in Regular Civil Appeal No.50 of 2003, then Appellate Court had held that there was joint ownership of Subhash Regude and one Chandrakant Vishwanath Kapse over Plot No.78, but that Court had disbelieved the document of partition as it was unregistered. It appears that Gunderao Kulkarni had purchased the plot from Chandrakant Kapse, however, it is obvious that when there was joint ownership of Chandrakant Kapse and Subhash Regude, Chandrakant could not have perfected the title of Gunderao. Therefore, the Appellate Court herein has correctly concluded after taking note of

the Judgment in Regular Civil Appeal No.50 of 2003 that the ownership of present appellant over Plot No.78 is excluding the share of Gunderao Kulkarni, and then it is also observed that the decree has been got by the present appellant by suppressing the facts and earlier litigations. Therefore, when each and every fact and the consequences of the earlier litigations have been correctly considered, there is no error on the point of facts or law. No substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case. Hence, the second appeal stands dismissed. Pending Civil Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed by
GAWADE
VIRENDRA J
Date: 2021.08.31
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