

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.810 OF 2012

WITH

**CIVIL APPLICATION NO.14082 OF 2012
IN SA/810/2012**

LATIFUNBEE W/O ABDUL KHALEQUE AND OTHERS

VERSUS

HAMIDABEE W/O ABDUL KHALEQUE AND OTHERS

...
Advocate for Appellants : Mr. N. P. Patil-Jamalpurkar
Advocate for Respondents No.5-A to 5-C, 6 to 8 : Mr. S. V Natu
Advocate for Respondents No.1, 2 and 4 : Mr. T. G. Gaikwad
AGP for Respondents No.9 and 10 : Mr. B. V. Virdhe.
...

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 20-08-2021.

ORDER :

1. Present appeal has been filed by the original plaintiffs to challenge the concurrent finding and Judgments by the Courts below. They have filed Special Civil Suit No.72 of 1998 before the Civil Judge, Senior Division, Ambajogai, District Beed, for declaration, permanent injunction and recovery of 1/3rd share from the compensation amount inclusive of the ancillary benefits awarded for the acquisition of the

land Gut No.189 situated at village Bardapur, Taluka Ambajogai, District Beed. The said suit came to be dismissed by learned Civil Judge, Senior Division, Ambajogai on 01-09-2007. The said Judgment and decree has been challenged by the present appellants before District Court, Ambajogai. It was heard by learned District Judge-1, Ambajogai and was dismissed on 13-09-2012. Hence, this second appeal.

2. Heard learned Advocate Mr. N. P. Patil-Jamalpurkar for appellants, learned Advocate Mr. S. V. Natu for respondents No.5-A to 5-C, 6 to 8, and learned Advocate Mr. T. G. Gaikwad for respondents No.1, 2 and 4, as well as learned AGP Mr. B. V. Virdhe for respondents No.9 and 10-State.

3. It has been vehemently submitted on behalf of the appellants that the Courts below have not properly considered the facts and the law points involved in the case. In fact, the Trial Court had rightly decided the relationship and the title of the plaintiffs. In fact, they had filed Regular Civil Suit No.28 of 1982 for partition and separate possession. That suit was decreed and the said decree has been confirmed till the Hon'ble Supreme Court. Therefore, it is very much confirm that the appellants have 1/3rd share in the suit lands and,

therefore, the respondent No.1 was not competent to sell the suit land Gut No.189 admeasuring 2 Acres 26 Gunthas without the knowledge and consent of the appellants. The sale deed was executed on 15-03-1984 only by respondents No.1 and 2. It can be seen that they in collusion with respondents No.5 and 6 created the said sale deed and, therefore, it cannot be said that the sale transaction is bonafide. When the right and share of the plaintiffs in the suit land was upheld up to the Hon'bel Supreme Court, the transfer of their share by respondents No.1 to 4 has to be termed as illegal. Further, the respondent No.6 has later on transferred area of 40 R in favour of respondents No.7 and 8 by registered sale deed dated 11-08-1995 which is also unauthorized and void. Later on the Special Land Acquisition Officer has acquired part of the suit land and compensation has been awarded. Naturally the plaintiffs have share in the said compensation and, therefore, the suit ought to have been decreed when the Trial Court erred the appeal filed by the present appellants before the First Appellate Court ought to have been allowed. Substantial questions of law are therefore arising in this case.

4. Per contra, the learned Advocate appearing for respondents

No.1, 2 and 4 as well as respondents No.5A to 5C, 6 to 8 supported the reasons given by the Courts below. Learned AGP representing respondents No.9 and 10 submitted that the land is acquired for the project, and definitely at the time when the compensation was awarded, the then position has been seen by the Land Acquisition Officer, accordingly the compensation was declared.

5. At the outset, it is to be noted that though the defendants had challenged the status of the plaintiffs, yet the Trial Court has held that the genealogy tree that has been given in para No.1 of the plaint, is correct. The plaintiffs are the heirs of one Abdul Khaleque and they have 1/3rd share in the suit land. The issues No.1 to 4 framed by the Trial Court have all been answered in the affirmative. There is no challenge to those findings on behalf of the defendants, therefore, those findings have achieved finality. Now the question is in respect of coming to the conclusions that the plaintiffs have 1/3rd share in the suit land, whether they can get the compensation amount to the extent of their share or not was the subsequent dispute. One more aspect that is required to be considered that though it appears that it was not taken specifically and issue has not been framed to that effect, is in respect of limitation. One more fact

that is required to be noted is that when all these sale transactions were going on, admittedly the proceedings in Regular Civil Suit No.28 of 1982 which was filed by the plaintiffs for partition and separate possession were pending at different levels. Therefore, when the plaintiffs have not taken care to amend their suit for partition then whether by way of separate suit whether they can claim the amount of compensation, is a question. Basically the sale deed which was executed by defendants No.1 and 2 was dated 15-03-1984. The certified copy of the sale deed has been produced at Exhibit 97. It is to be noted that at that time Regular Civil Suit No.28 of 1982 was still pending before the Trial Court. The First Appeal challenging that decree was filed in 1988 i.e. Regular Civil Appeal No.120 of 1988. Thereafter, the second appeal was filed by the defendants before this Court in the year 2000 i.e. Second Appeal No.601 of 2000. Thereafter, the matter went to Hon'ble Supreme Court. Another fact is that this sale deed dated 15-03-1984 was in favour of defendant No.6 Shantabai w/o Dattatraya Shinde. Her name has been recorded by mutation entry No.470 on 29-04-1984. Thereafter, even she has sold almost 1 Acre land on 11-08-1995 to defendants No.7 and 8. According to the plaintiffs these sale deeds i.e. dated 15-03-1984 and 11-08-1995, are collusive and bogus. In

order to show that the plaintiffs ought to have produced cogent, material and conclusive evidence stating that these defendants had the knowledge about the litigation and the result therein. Now when the suit was filed by the plaintiffs for partition and separate possession, they cannot claim ignorance about the sale transaction between defendants No.1 to 4 and 6 and later on between respondents No.6, 7 and 8. When the name of defendant No.6 got mutated to the suit land in the year 1984 itself, it ought to have been made the subject matter and consequent prayers ought to have been made by the plaintiff in that suit. No doubt, if the party has purchased a property which was under litigation then it will not get right in the property more than the vendor has. However, when the plaintiff herein had every knowledge and could have acquired it, cannot just claim ignorance regarding the mutation entry. Another fact that is required to be noted is that in his Judgment the learned First Appellate Court, dealing with Regular Civil Appeal No.82 of 2007, the decree which is under challenge before this Court, has specifically stated that the subject matter of the sale deeds dated 15-03-1984 and 11-08-1995 i.e. Gut No.189 was not shown as suit property in Regular Civil Suit No.28 of 1982 in the Judgment, that is, in the final order of the Judgment of the Trial Court. Same fact had

appeared in the decree also and the non inclusion of that gut number in the final order as well as decree passed by the Trial Court, was never challenged by the plaintiff at any subsequent stages up to Hon'ble Supreme Court. In other words, the Judgment and decree passed in Regular Civil Suit No.28 of 1982 was consisting of some different lands than Gut No.189. Even if the share was demanded from that land also, it was not included in the final order and the decree. It amounts to refusal in view of *Explanation V of Section 11* of the Code of Civil Procedure. Under such circumstances, first of all in spite of pendency of the earlier suit, plaintiffs have not made the defendant No.6 as party to the earlier litigation and has not made amendment to the plaint therein is one of the cause, and secondly when the interpretation would amount to the rejection of the relief of partition in respect of Gut No.189 and it had achieved the finality then the plaintiffs claim for 1/3rd share in the compensation amount has rightly been rejected by both the Courts below.

6. Another fact to be noted is that the award was passed regarding compensation on 13-06-1996. Both the Courts below have also considered the fact that for claiming compensation and

also filing application for enhancement in the same or any other relief. The period of limitation is prescribed and the date has to be reckoned from the knowledge of the essential contents of the award and not the actual date of the Collector's award. Even if we consider that, yet the knowledge of the plaintiffs would be attributable to 13-06-1996, yet the suit that was then filed on 13-08-1998 was beyond the period of limitation.

7. The things which can be viewed from another angle is that no decree was passed in respect of claim of share in Survey No.56 i.e. Gut No.189 which was then transferred by defendants No.1 and 2 in favour of defendant No.6. The said sale deed was executed on 15-03-1984. In the present suit no relief was asked in respect of that sale deed and also in respect of subsequent sale deed dated 11-08-1995. Provisions of Section 52 of the Transfer of Property Act will not be then applicable by this chronology that the relief in respect of that property was rejected by the Trial Court which decided Regular Civil Suit No.28 of 1982. Therefore, any such act amounting to challenge to the sale deed dated 15-03-1984 on 13-08-1998 by filing Special Civil Suit No.72 of 1992 would be beyond the period of limitation. Under such circumstances, from any angle if we consider

the case, it is raising no substantial questions of law. The concurrent findings given by both the Courts below is correct and legal and, therefore, the second appeal deserves to be dismissed at the threshold, accordingly it is dismissed. Pending civil application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.10.01
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