

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

**SECOND APPEAL NO.623 OF 2019
WITH CA/6451/2018 IN SA/623/2019**

NAJIRBEE JAVED SHAIKH ABDUL RAHEMAN
VERSUS
VIDYAKALA DNYANDEO KAKADE AND ANOTHER

...
Advocate for Appellant : Mr. N.D. Kendre
Advocate for Respondent No.1 : Mr. V. D. Gunale
...

CORAM : MANGESH S. PATIL, J.

DATE : 18.04.2022

PER COURT :

This is the Second Appeal by the original defendant No.2 who has suffered a decree for declaration that the sale deed executed by the respondent No.2 (defendant No.1) in her favour was not binding on the respondent No.1 (plaintiff) and for possession of the suit plot.

2. I have heard the learned advocate Mr. Kendre for the appellant and learned advocate Mr. Gunale for the respondent No.1 (original plaintiff).

3. The respondent No.1 averred that she purchased the suit plot from original owner Mr. Gojamgunde under a registered sale deed dated 18.05.1982. However, later on the plot was transferred from person to persons who in turn sold it to the successors and lastly the respondent No.2 purchased it and sold it to the appellant. All these sale deeds were subsequent to the sale deed executed by Mr. Gojamgunde in favour of

respondent No.1. She had filed Regular Civil Suit No.182/2005 against the respondent No.2 alone seeking declaration and injunction however, since she lost possession to the respondent No.2, she withdrew the suit with the leave of the Court and on the very day respondent No.2 executed the sale deed in favour of the appellant. Hence she claimed the declaration that the sale deed is not binding on her and claimed possession.

4. The appellant contested the suit. She denied respondent No.1 having purchased the suit plot from Mr. Gojamgunde. She asserted that Mr. Gojamgunde has sold the suit plot to one Prabha Dhanegaonkar. Subsequently it was transferred to various persons and ultimately she purchased it from the respondent No.2 under a registered sale deed and was in rightful possession as its owner. She claimed to be the *bona fide* purchaser for value without notice of the respondent No.1's right and also put up a plea of adverse possession.

5. The trial court framed issues including the one of the appellant being the *bona fide* purchaser for value without notice. Conspicuously the issue regarding adverse possession was not framed. The trial court decreed the suit.

6. By the judgment and order under challenge in this Second Appeal, the appellate court dismissed the appellant's appeal even after framing a point regarding adverse possession and limitation.

7. Considering the limitation on the powers of this Court to cause interference in the concurrent findings of facts of the courts below as laid

down in the catena of judgments of the Supreme Court, in the matter of **Hero Vinoth (minor) Vs. Seshammal; (2006) 5 SCC 545** and **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.; (2009) 5 SCC 264**, etc. even if one proceeds to examine the matter in hand, I am afraid, no substantial question of law arises in the Second Appeal.

8. Though initially the appellant disputed the sale deed in favour of the respondent No.1, it was subsequently duly proved by examining the attesting witness as also her husband, being a registered document in the form of a sale deed (Exhibit-51). Concurrent conclusion drawn by the courts below about the respondent No.1 having purchased the suit plot under that sale deed is clearly based on correct appreciation of the evidence on the record and deserves to be accepted.

9. There is no dispute about the fact that Mr. Gojamgunde was the original owner. There is evidence on the record to demonstrate that he had executed a general power of attorney in favour of his son authorizing the latter to dispose of the properties. Pursuant thereto the sale deed (Exhibit – 51) was executed in favour of the respondent No.1 by the son of the original owner Mr. Gojamgunde.

10. It does appear that Mr. Gojamgunde subsequently sold the very same suit plot to one Dhanegaonkar and later on every purchaser of the suit plot sold it to the successor, the appellant being the last one to have purchased the suit plot in the year 2007.

11. As has been rightly remarked by the trial court, once having

sold the suit plot to the respondent No.1, Mr. Gojamgunde had no right, title or interest which he could have validly transferred to the successor even by executing a sale deed. If such was the state of affairs, no exception can be taken to the concurrent findings of the facts that the respondent No.1 had derived the title to the suit plot first in point of time.

12. There was also evidence before the courts to demonstrate that the respondent No.1 had filed earlier suit against the respondent No.2 for declaration and injunction. However, asserting that she had lost possession in the meanwhile, she had purportedly withdrawn the suit with the leave of the Court as contemplated under Order XXIII Rule 1 of the Code of Civil Procedure and filed the present suit arraying appellant as the defendant No.2 in view of execution of the sale deed by the respondent No.2 in the former's favour.

13. Though it is argued by Mr. Kendre for the appellant that in spite of plea of adverse possession, the trial court had not framed any issue regarding adverse possession and limitation and the appellate court did undertake such exercise and in my considered view, there is no apparent illegality.

14. Though the appellant was coming with several inconsistent pleas and was entitled to do so, as was rightly pointed out by the trial court, it was expected of her to have elected to stick to one such stand. She claimed to be a *bona fide* purchaser for value without notice and allowed the trial to proceed even in the absence of any issue regarding adverse

possession and limitation. This conduct of her is eloquent enough to conclude that she had elected to take one stand which was considered by the trial court. Though it was not necessary, the appellate court formulated a point regarding plea of adverse possession and limitation and has answered it objectively. Therefore, I see no illegality in the trial court refusing to frame any issue about adverse possession and limitation.

15. All in all, there are concurrent findings of facts based on correct appreciation of evidence upholding title of the respondent No.1 to the suit plot and decreeing the suit as prayed for. No substantial question of law arises.

16. The Second Appeal is dismissed with costs.

17. Pending application is disposed of.

(MANGESH S. PATIL, J.)