

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

SECOND APPEAL NO. 23 OF 2015

Jamilabi Mohammad Farahim – died through L.Rs.

1A. Ashabano W/o Bashir Ahemad and others ... Appellants

Versus

Kayyum Ahmad Siraj Ahmad and others ... Respondents

....

Mr. Parag V. Barde, Advocate h/f Mr. A. D. Sonar, Advocate for appellants

Mr. S. P. Shah, Advocate for respondents

....

CORAM : R. G. AVACHAT, J.

DATED : 09th JUNE, 2022

PER COURT :-

. Heard the learned Advocate for the appellants at length.

2. This is the second appeal preferred by the original defendant Nos. 1 and 2 in Regular Civil Suit No.364 of 2000. The appellants herein have suffered a decree for delivery of possession of the property, particularly described in paragraph No.1 of the plaint. The decree passed by the trial Court has been confirmed by the First Appellate Court. As such, it is a case of concurrent finding of fact(s).

3. It was the suit filed by the plaintiffs (respondents herein) for possession of the suit property on title. The subject matter of the

suit is the house property bearing C.T.S. No.3438/1A. According to the respondents – plaintiffs, the property admeasures 56 square meters. While the appellants claimed that it was not more than 46 square meters and only 25 square meters portion thereof was sold to the respondents – plaintiffs.

4. Admittedly, the defendant No.1 had become the owner of the property bearing C.T.S. No.3438/1A by virtue of a will dated 22.10.1973. Under a registered sale-deed dated 07.10.1992, the appellant No.1 (defendant no.1 in the suit), sold the property bearing C.T.S. No.3438/1A admeasuring 56 square meters to the respondents – plaintiffs. The appellant No.1 (defendant) has given a categorical admission about the execution of the sale-deed. In case of a conflict between the terms of the document and oral evidence, the document shall prevail. The perusal of the description of the property sold under the sale-deed dated 07.10.1992, it is crystal clear that the entire property in C.T.S. No.3438/1A has been sold. The boundaries of the property sold, are as under:

East :	C.T.S. N0.3438
West :	User of the house and road
South:	C.T.S. No.3438/1-B
North	By lane and road

5. Admittedly, on to the South of the suit property, the property belonging to the plaintiffs exists. Some middle portion of C.T.S. No.3438/1A was sold by appellant No.1 to appellant no.2, subsequent to the sale of the entire property in favour of the plaintiff(s). It is the case of the plaintiffs that the appellant No.1 was permitted to temporarily occupy that much portion.

6. Since the entire property in C.T.S. No.3438/1A was sold by the appellant No.1 to the plaintiffs under a registered sale-deed dated 07.10.1992, nothing remained with her to transfer any part thereof in favour of the plaintiff No.2 under the sale-deed executed subsequently.

7. As such, the trial Court has rightly decreed the suit. The First Appellate Court has confirmed the same. No substantial question of law does arise in this Second Appeal. The Second Appeal therefore stands dismissed.

8. In view of dismissal of the appeal, pending civil application No.809 of 2015 does not survive and therefore the same is disposed of.

[R. G. AVACHAT, J.]