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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.657 OF 2022
ALONGWITH
CIVIL APPLICATION NO.471 OF 2018
IN
SECOND APPEAL NO.657 OF 2022**

Smt. Yashodabai Ganpatrao Pawar
since deceased through her
legal representatives
1 Shri Shivaji Ramchandra Pawar
and Others.

....Appellant(s)

V/s

Shri Bahuba Waman Shinde and Others

....Respondent(s).

Mr. Nikhil Wadikar a/w Mr. Niranjan Kanade a/w Mr. Malhar Pawar
i/b Mr. Nandu Pawar for the Appellant(s).

CORAM: NITIN W. SAMBRE, J.

DATE : OCTOBER 03, 2022

P.C.:

1] This Second Appeal is against the concurrent findings recorded
by both the Courts below.

2] Appellant herein/original Plaintiff initiated Regular Civil Suit
No.259 of 2001, seeking declaration that the Appellant/Plaintiff is the

owner of the suit property and the alleged Sale Deed executed in favour of father of the Respondents/Defendant on 26/04/1976 be declared as cancelled as the same is contrary to law and not binding on the Plaintiff and an injunction is sought that possession of the Plaintiff be not interfered with. Said claim was substantiated with pleadings that son-in-law of the Plaintiff viz. Anandrao Ganpatrao Sabale has practised fraud for self interest, obtained thumb impression of the Appellant/Plaintiff and in connivance with the father of the Defendants got executed agreement of sale. It is further claimed that since Plaintiff is an uneducated lady, the alleged Sale Deed of 26/04/1976 was never executed by her and the said document is sham and bogus. It is further claimed that Mutation Entry based on the aforesaid fraudulent document was carried of which she got knowledge on 16/01/1996.

3] Aforesaid claim was resisted by the Respondents/Defendants through Written Statement-Exhibit-52. According to the Respondents, only after conducting proper inquiry, property in question was purchased by their father. It is claimed that before Sale Deed was

effected, agreement of sale was also executed for which total consideration agreed was Rs 40,000/-, of which Rs 25,000/- was already paid. It is their contention that both the documents are duly registered as they are for consideration of above Rs 100/- in relation to immovable property. As such, it is claimed that sale of the property is in accordance with what has been stated under Section 54 of the Transfer of Property Act.

4] Trial Court has framed issues at Exhibit-62. Amongst other issues are, whether Plaintiff has proved that she is a land owner of the suit property, which has been answered against her. Similarly, issue as to whether the Plaintiff has proved that Sale Deed dated 26/04/1976 executed by her father without accepting any consideration was fraudulent and other issue viz whether Plaintiff has proved that Sale Deed is not binding on her are also answered against the Plaintiff.

5] Suit came to be dismissed vide judgment dated 31/7/2009 passed by Civil Judge, Junior Division, Satara. Plaintiff feeling

aggrieved preferred an Appeal being Regular Civil Appeal No. 334 of 2009 which was also dismissed on 07/08/2017. As such, this Second Appeal by original Plaintiff against the concurrent findings.

6] Contentions of the Counsel for the Appellant/Plaintiff are, even if both documents viz agreement of sale dated 09/06/1975 and Sale Deed-Exhibit-132 dated 26/04/1976 are registered documents, execution of agreement of sale is not disputed, however what is disputed is contents of agreement of sale. According to Counsel for the Appellant, Sale Deed was allegedly never executed by the Appellant and as such burden under Section 100 and 101 of the Indian Evidence Act shifts on the Respondents/Defendants to prove that they got the Sale Deed executed by paying valid consideration. He would as such urge that issue No.2 which is framed by the Trial Court is incorrect, so also lower Appellate Court has shown same line of appreciation. He would further urge that there is continuous cause of action as Sale Deed in question was never executed by the Appellant and that being so, Section 22 of the Limitation Act will attract. It is further claimed that land in question is a mirashi

property and as such approval from the competent revenue authority is required for execution of Sale Deed which was not obtained at the time of executing Exhibit-132.

7] I have appreciated said submissions.

8] Fact remains that both the documents i.e. Sale Deed dated 26/04/1976-Exhibit-132 and agreement of sale dated 09/06/1975 which preceded aforesaid Sale Deed are registered documents which were executed for consideration of more than Rs 100/- in relation to the immovable property. Fact remains that total consideration as mentioned in the agreement of sale was Rs 40,000/- of which Rs 25,000/- was already accepted. It was agreed that Sale Deed would be got executed within one year after payment of balance consideration. Possession was to be handed over by the Appellant at the time of execution of Sale Deed.

9] In this background, if we appreciate recitals in the Sale Deed-Exhibit-132, what can be noticed is, said document contains agreed

consideration of Rs 40,000/- of which Rs 25,000/- was paid on 09/06/1975 i.e. on the date of agreement of sale. It further speaks of possession being handed over to the father of the Respondents.

10] It is claimed by the Counsel for the Appellant that Appellant was an uneducated lady and Sale Deed was executed by putting thumb impression, by drawing support from the judgment of the Apex Court in the matter of *Annapurna Barik Dei and another vs. Inda Bewa and others* reported in **AIR 1995 Orissa 273**.

11] I have perused the Plaint. The Plaint contains vague reference to the agreement of sale without any specification. It appears that said agreement of sale was produced on record by the Respondents, which was executed on 9th June, 1975. The said agreement contains recitals about agreed total consideration of Rs 40,000/- of which Rs 25,000/- appeared to have been received, whereas remaining Rs 15,000/- were to be received after permission was obtained from the Office of Sub-Divisional Officer. It also contains recitals that possession shall be handed over at the time of execution of Sale Deed.

The Sale Deed-Exhibit-132 was executed and registered on 26/04/1976. Same also contains recitals about aforesaid agreement of sale of 09/06/1975 and also permission obtained by the Appellant from the Office of Sub-Divisional Officer for executing Sale Deed, dated 16/04/1976.

12] As such, what can be noticed is, Sale Deed appears to have been executed after obtaining permission from the Sub-Divisional Officer in continuation of agreement of sale dated 09/06/1975. Neither agreement of sale dated 09/06/1975 is questioned nor the permission referred to in the Sale Deed which was granted by the Sub-Divisional Officer on 16/04/1976 for transfer of the land. It is the case of the Appellant that Sale Deed was never executed by the Appellant. It is also claimed that agreement of sale was executed under the influence of Anandrao Ganpatrao Sabale, son-in-law of the Appellant/Plaintiff. Fact remains that Anandrao Ganpatrao Sabale was alive on the date of recording of evidence and still he was neither examined nor added as party-defendant to the suit. Appellant has framed the suit in calculated manner so as to cast the burden on the Defendants by

taking undue advantage/benefit of her illiteracy based on provisions of Sections 101 and 102 of the Indian Evidence Act. However, fact remains that agreement of sale is a registered document, permission from Sub-Divisional Officer was obtained at the behest of the Appellant on 15/4/1976 before execution of Sale Deed, Mutation Entry pursuant to the Sale Deed executed way back in 1981 which was objected to by the Appellant sufficiently speaks of conscious knowledge of the Appellant about existence and execution of Sale Deed. It also demonstrates that the Appellant in 1982 has participated in the revenue proceedings pertaining to Mutation Entry and for seeking permission from revenue authority for transfer of the land.

13] Article 59 of the Limitation Act prescribes limitation for three years for questioning Sale Deed which starts running from the fact Sale Deed was within the knowledge of the Plaintiff. Fact remains that permission granted by the Sub-Divisional Officer on 15/4/1976 in favour of the Appellant for transferring the land and subsequent mutation proceedings of 1981 in which Appellant has participated sufficiently prompts this Court to infer that suit claim of the Appellant

was brought in action beyond limitation. Fact remains that Plaintiff herself has not entered in the witness box and is examined through her Power of Attorney holder i.e. daughter-in-law. The initial burden ought to have been discharged by the Appellant by entering in witness box which she has failed to. Even document of Power of Attorney is also not proved. As such, having regard to the law laid down by the Apex Court in the matter of *Vidyadhar vs. Manikrao and another* reported in (1999) 3 SCC 571, testimony of the Power of Attorney holder for the Appellant cannot be accepted to the extent of facts which were within the personal knowledge of the Plaintiff/Appellant.

14] In the aforesaid backdrop, claim put-forth that provisions of Section 16 of the Indian Contract Act will come into play will be hardly of any significance, as it is established from the record that the Appellant has not approached the Court with clean hands. In this background, claim put forth by Counsel for the Appellant that burden was not discharged by the Respondents to prove execution of Sale Deed cannot be inferred. Another mitigating circumstances such as status of the Appellant as widow, admission on her part that her son

was alcoholic, admission to the execution of agreement of sale dated 09/06/1975 without admitting contents therein, recitals about loan repayment, the fact that Anandrato Ganpatrao Sabale who allegedly influenced execution of the transaction being alive on the date of recording of evidence and not made party to the proceedings rightly prompted the Courts below to dismiss the claim.

15] In the aforesaid backdrop, it cannot be said that Courts below have committed an error in recording findings against the Appellant/Plaintiff. That being so, no case for interference is made out. Second Appeal as such fails and same stands dismissed. As a consequence pending Interim Application is also dismissed.

(NITIN W. SAMBRE, J.)