

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.463 OF 2013
WITH
CIVIL APPLICATION NO. 8868 OF 2013
IN
SECOND APPEAL NO. 463 OF 2013

Shrirang Parvatarao Bhoite
and others

... Appellants

Versus

Subhadrabai Dashrath Dorge
Through L.Rs. Manik
and others.

... Respondents

...
Mr. D.B. Rode- Advocate for the appellants.

....
CORAM : GAURI GODSE, J.

DATE : 23rd February, 2023

PER COURT :

Second Appeal No. 463 of 2013

1. Learned counsel for the appellants state that appellant no.2 has expired and appellant nos.1, 3 to 7 are the heirs and legal representatives of deceased appellant no.2. He states that necessary pursis to that effect is already placed on record. He submits that as heirs and legal representatives are already on record in different capacity, he may be granted leave to amend

the cause title to show that appellant no.2 is deceased through her heirs and legal representatives, who are already on record. Leave to amend is granted. Amendment be carried out forthwith.

2. Heard. Second Appeal is admitted on the following substantial questions of law :

(i) Whether both the Courts ought to have framed proper issue with respect to the pleadings of the appellants that the suit property was a joint family property of the plaintiffs and defendant no.2 and whether plaintiff no.2 had any exclusive right to present suit property ?

(ii) Whether in the event the suit property was held to be joint family property of the plaintiffs and defendant no.2, in that event whether the sale deed in favour of defendant no.2 was executed for the purpose of legal necessity of the joint family ?

3. Issue notice to the respondents. In addition to court notice, the appellants shall serve the respondents by private service and file service affidavit.

4. Call for record and proceedings.

5. Printing is dispensed with.

6. The appellants to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of

evidence and exhibited documents, within a period of one year from today.

7. Hamdust is granted for service as well as record and proceedings.

Civil Application No.8868 of 2013:

8. This application is filed for an order of temporary injunction during the pendency of the second appeal. The prayer in the civil application is for restraining respondent nos.1 to 6 from disturbing possession of the applicants over the suit property. There is also prayer for restraining respondent nos.1 to 6 from creating any third party interest in the suit property.
9. The second appeal arises out of concurrent decree thereby dismissing the suit of the appellants for declaration and cancellation of the sale deed executed in favour of deceased respondent no.1. Both the Courts have recorded finding that the appellants have failed to prove their case with respect to the plaintiffs/appellants are in possession of the suit property. Application do not mention as to whether there was any interim protection during pendency of the suit or during pendency of the first appeal. Second Appeal is filed in the year 2013. There is no prima facie case made out for grant of any injunction at this stage. Hence, considering the nature of facts of the case as well as the findings recorded by both the Courts no case is made out

to grant any injunction at this stage. Hence civil application has no merit and the same is dismissed.

[GAURI GODSE, J.]