

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 221 OF 2021
WITH
CIVIL APPLICATION NO. 4808 OF 2021
IN
SECOND APPEAL NO. 221 OF 2021
WITH
CIVIL APPLICATION NO. 17164 OF 2022
IN
SECOND APPEAL NO. 221 OF 2021
WITH
CIVIL APPLICATION NO. 252 OF 2023
IN
SECOND APPEAL (ST) NO. 33003 OF 2022
WITH
CIVIL APPLICATION NO. 253 OF 2023
IN
SECOND APPEAL (ST) NO. 33284 OF 2022

Pravin Laxman Chabukswar	... Appellant
<i>Versus</i>	
Sam Eraj Patel and Ors.	... Respondents

...

Mr. Mr. S.S. Jadhav – Advocate for Appellant
Mrs. C.S. Deshmukh – Advocate for Respondent No.1

....

CORAM : GAURI GODSE, J.
DATE : 13th January, 2023

PER COURT :

1. Second Appeal No. 221 of 2021 is filed by original defendant no.2, against whom there is a decree for possession in respect of the suit property being plot no. 16-A. The appellant is

challenging the judgment and decree dated 19th September, 2016 passed by the learned Joint Civil Judge, Junior Division, Ahmednagar in Regular Civil Suit No. 142 of 2010 as well as the judgment and decree deated 23rd February, 2021 passed in Regular Civil Appeal No. 24 of 2017 passed by the District Judge – 8, Ahmednagar. Respondent no.1 – Sam Patel had filed the said Regular Civil Suit No. 142 of 2010 for declaration of title and possession against the appellant – Pravin Chabukswar and one Birendra Tiwari.

2. The trial court as well as the appellate court has passed common judgments in three suits and three appeals arising out of same suit property. For the sake of convenience all the parties are referred to by their names.
3. Pravin Chabukswar had filed Regular Civil Suit No. 88 of 2008 against Sam Patel and Birendra Tiwari for declaration that the registered sale-deed dated 3rd October, 1992 executed by Birendra Tiwari in favour of Sam Patel was not binding on him. Pravin Chabukswar also filed Regular Civil Suit No. 371 of 2009 against Sam Patel praying for a declaration that he was owner of the suit property and in possession pursuant to

registered sale-deed dated 24th August, 2004. The description of the suit property in the suit filed by Pravin Chabukswar was plot no.16 and the description of the suit property in the suit filed by Sam Patel was plot no. 16A. The boundary description of the both properties is one and the same.

4. All the three suits were tried together and disposed off by passing a common judgment. The trial court framed separate issues in all the three suits and Sam Patel was declared as owner of plot no. 16-A in view of the sale-deed dated 3rd October, 1992 executed by Birendra Tiwari. Thus, the trial court decreed the suit of Sam Patel and declared him as owner of the suit property no. 16-A and directed Pravin Chabukswar, to handover possession of the suit property to Sam Patel.
5. Being aggrieved and dissatisfied by the trial court's judgment and decree in the suit filed by Sam Patel, Pravin Chabukswar filed Regular Civil Appeal No. 24 of 2017. Regular Civil Appeal No. 23 of 2017 was filed against dismissal of his Regular Civil Suit No. 88 of 2008 and Regular Civil Appeal No. 20 of 2017 was filed against dismissal of his Regular Civil Suit No. 371 of 2009. All the three appeals filed by Pravin Chabukswar are

dismissed by common judgment and order dated 23rd February, 2021. Hence, he has filed three separate Second Appeals. Second Appeal No.221 of 2021 is arising out of decree of possession in Regular Civil Suit No.142 of 2010. Second Appeal (St) No. 33284 of 2022 is arising out of dismissal of Pravin Chabukswar's Regular Civil Suit No.371 of 2009 and Regular Civil Appeal No.20 of 2017. Second Appeal (St) No.33003 of 2022 is arising out of dismissal of Pravin Chabukswar's Regular Civil Suit No.88 of 2008 and Regular Civil Appeal No.23 of 2017.

6. The common dispute that arises in all the three appeals is with respect to plot of land which was sold by Birendra Tiwari. It is not disputed that, there are two separate sale-deeds one prior in time in favour of Birendra Tiwari and subsequently in favour of Pravin Chabukswar. Both the courts below recorded findings that, the evidence on record and documents show that Birendra Tiwari had sold the suit plot no. 16-A to Sam Patel by sale-deed dated 3rd October, 1992. Thus, by accepting title of Sam Patel, Pravin Chabukswar was directed to handover the possession of the suit property being plot no.16A to Sam Patel.

7. Learned counsel for the appellant (Pravin Chabukswar) in all three appeals submitted that, learned first appellate court has examined the status of original plot which was owned by Birendra Tiwari and in what manner the boundaries were described as Gut no. 550 part and Plot no.16-A, which was necessary for the identification of the properties i.e. plot nos.16 and 16-A. Learned counsel appearing for the appellant submitted that, Birendra Tiwari had supported the case of appellant and had denied that, he had executed sale-deed in favour of Sam Patel. He further submitted that, perusal of the lay out plan shows that there was in fact plot described as plot no.16, which was sold by Birendra Tiwari to the present appellant. He therefore submitted that, though there are lay out plans and sale-deeds on record both the courts mis- appreciated the evidence on record and have erroneously decreed the suit of Sam Patel. He therefore, submitted that, documents and evidence on record shows that, suit property is owned by appellant pursuant to sale-deed dated 24th August, 2004 executed by the original owner Birendra Tiwari in favour of the appellant, which showed the correct description i.e. plot no. 16. He therefore submitted that, both the judgments are required to

be interfered with as there involves substantial questions of law with respect of mis-appreciation of evidence as well as documents on record. He therefore submitted that, all three appeals are required to be admitted.

8. Mrs. Deshmukh – learned counsel for Sam Patel who is plaintiff – decree holder in Regular Civil Suit No. 142 of 2010 appears on caveat. She submitted that, there is no challenge with respect to the sale-deed executed in favour of Sam Patel in respect of plot no. 16-A. She submitted that, the description of plot which is subject matter of the sale-deed dated 3rd October, 1992 is of sanctioned lay out plan and both the courts have rightly recorded the findings that, Sam Patel is the owner pursuant to sale-deed dated 3rd October, 1992. She submitted that, after proper appreciation of the documents and evidence on record, the trial court dismissed the suits filed by Pravin Chabukswar. She further submitted that, there is no question of law, involved in the Second Appeals and the Second Appeals be dismissed.
9. I have perused the record of all the three second appeals. The trial court after appreciating the oral as well as documentary evidence on record, including the contention raised by Birendra

Tiwari with respect to dispute of sale-deed in favour of Sam Patel, has recorded that, there is no evidence to support the theory of Birendra Tiwari that he has never executed sale-deed in favour of Sam Patel. The trial court has further held that, the facts on record showed that the subsequent sale-deed executed in favour of Pravin Chabukswar has been fraudulently executed. The trial court appreciated the mutation entries with respect to the suit property and decreed the suit in favour of Sam Patel.

10. So far as the case of present appellant with respect to (i) his sale-deed, (ii) the property which was sold to him and property which was sold to Sam Patel being different properties and (iii) that the plot number shown in the sale-deed of Sam Patel as plot no. 16-A was not in existence, was considered by the trial court in detail and a finding of fact is recorded that, as per boundaries of plot in respect of plot no. 16-A and boundaries of sanctioned layout plan, Sam Patel, was owner of suit property plot no. 16-A as per registered sale-deed dated 3rd October, 1992.
11. The first appellate court has also minutely perused the sale deeds as well as evidence on record and has confirmed the findings of the trial court. Both the courts have not accepted the

grounds raised by Pravin Chabukswar with respect to ownership of the plot, which was sold to Sam Patel in the year 1992. The first appellate court has examined the boundaries of plot no. 16 as reflected in sale-deed dated 24th August, 2004 executed in favour of Pravin Chabukswar and the boundaries of the Gut No. 550 part, and concluded that the property is identical and in the entire layout there was no description showing plot no. 16. Thus, the property though shown with different plot numbers was in fact the same plot and thus the property described by Sam Patel on the basis of his sale-deed and sanctioned development lay out plan, he was owner of the suit property. Thus, by appreciating the evidence on record the first appellate court has confirmed the findings of fact recorded by the trial court.

12. The submissions made on behalf of appellant are in respect of factual aspects for which re-appreciation of evidence is required. No substantial question of law arise in the Second Appeal. Hence, Second Appeal No. 221 of 2022 is dismissed.
13. So far as the Second Appeal (ST) No. 33284 of 2022 and Second Appeal (ST) No. 33003 of 2022 is concerned the same are pending for condonation of delay. Civil Application No. 253

of 2023 and Civil Application No. 252 of 2023 are filed for condonation of delay. For the reasons given in the applications, both the applications for condonation of delay are allowed and the office is directed to register both the Second Appeals for statistical purpose.

14. Since all the three appeals arise out of same impugned judgment and order, both the said Second Appeals are also dismissed for the reasons recorded above.
15. In view of dismissal of all the three Second Appeals, all the pending civil applications are disposed of as infructuous.

[GAURI GODSE]
JUDGE