

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.567 OF 2022
WITH
INTERIM APPLICATION NO.17094 OF 2022
IN
SECOND APPEAL NO.567 OF 2022**

Vishranti Damodar Dattu & Anr. ...Appellants/
Applicants

V/s.

Kranti Damodar Dattu & Ors. ...Respondents

Mr. Machhindra A. Patil, for the Appellants/Applicants.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 31st JANUARY, 2023**

P.C.:

1. Heard Mr. Machhindra A. Patil, learned counsel appearing for the Appellants who are original Plaintiffs.

2. According to Mr. Patil following substantial question of law is involved in the Second Appeal :

i) Whether the Appellate Court was right in allowing para-4(A) added in the final order without any issue framed by the Appellate Court and therefore without issuing and without finding para-4(A) added in final order and allotted the

share of the Defendant No.4 and subsequent the share to be allotted to the Defendant Nos. 7 and 8 was legal and proper?

3. The Appellants are the original Plaintiffs. The Plaintiffs filed Regular Civil Suit No.50 of 10 seeking partition and separate possession.

4. The learned Trial Court has decreed the suit and passed following operative order :

"(1) The suit is partly decreed with costs.

(2) It is hereby declared that, the plaintiffs no. 1 and 2 and defendants no. 1 to 4 are entitled to partition and separate possession of 1/6th share each in the suit property i.e. Gat no. 2287/1 admeasuring 2 H. 5 R uncultivable 0 H. 03 R situated at Mouje Mangalwedha, Tq. Mangalwedha, Dist. Solapur and also the similar share in the right over the suit well situated at land bearing Gat no. 2288 and 2290 of Mouje Mangalwedha, Tq. Mangalwedha, Dist. Solapur.

(3) On the application of plaintiffs or the defendants no. 1 to 3 the decree for partition and separate possession of the suit property (Gat no. 2287/1) be sent to District Collector, Solapur for execution u/s. 54 r/w order XX rule 18 of the Code of Civil Procedure, 1908.

(4) It is hereby declared that, the registered sale

deed bearing no. 654/1999 dt. 29/04/1999 executed by defendant no. 4, the sale deed dt. 02/11/2002 executed by defendant no. 3 and consequent mutation entries are void and not binding on plaintiff's share in the suit property.

(5) The claim of mesne profits is rejected.

(6) Preliminary decree be drawn up accordingly."

5. Thus, it is clear that, in clause No. 4 of the Judgment and Decree of the learned Trial Court, it has been declared that, the registered sale deed dated 29th April, 1999 executed by defendant no. 4 and consequent mutation entries are void and not binding on plaintiff's share in the suit property.

6. The said Decree has been challenged by the original Defendant Nos. 7 and 8 i.e. the purchasers. The learned Appellate Court dismissed the Appeal and maintained the Decree passed by the learned Trial Court in respect of determination of the shares of the parties and confirmed determination of the shares. However, added para no. 4(A) in the final order. The said para no. 4(A) added in the Judgment and Decree of the learned Trial Court reads as under :

"4(A). In the partition the share of the defendant no.4 in the suit land be separated and the possession of the same be handed over to the

defendant nos. 7 and 8."

7. Admittedly, the registered sale deed dated 29th April, 1999 was executed by the Defendant No.4. The learned Trial Court has come to the conclusion that, the said sale will not bind the Plaintiff's share. The learned Appellate Court has only modified the Decree, by which, share of the Defendant No. 4 has been allotted to the Defendant Nos. 7 and 8.

8. Thus, it is clear that, the Decree as modified by the learned first Appellate Court is not passed against the Appellants who are original Plaintiffs as the share of the parties are not at all affected by the Judgment and Decree of the learned first Appellate Court. The learned Appellate Court has just allotted share of the Defendant No.4 in favour of the purchasers i.e. Defendant Nos. 7 and 8. By said modification the present Appellants i.e. original Plaintiffs are not at all affected.

9. Admittedly, the registered sale deed dated 29th April, 1999 was executed by the Defendant No.4 who has received valuable consideration and, therefore, share allotted to the Defendant No.4 has been allotted in favour of Defendant Nos. 7 and 8 who are the purchasers. Thus, the Appellants are not

at all affected and therefore are not aggrieved by the modification done by the learned First Appellate Court and, therefore, there is no substance in this Second Appeal.

10. It is also significant to note that, the person who is aggrieved i.e. Defendant No.4 who's share has been allotted in favour of the Defendant Nos. 7 and 8 has not challenged the modification made by the learned First Appellate Court.

11. For above reasons the Second Appeal is dismissed with costs.

12. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)