

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.794 OF 2017
WITH
CIVIL APPLICATION NO.1196 OF 2017**

Shri. Sarjerao Vilas Bilaskar ...Appellant

Vs.

Aba Dnyanu Kamble (deceased) ...Respondents
thru' LRs Vasant Namdeo Kamble

Mr. Satyajeet Anil Rajeshirke for Appellant/
Applicant.

Mr. Nilesh Wable for Respondents.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 21st FEBRUARY 2023**

P.C.:

1. Heard Mr. Rajeshirke, learned Counsel appearing for the Appellant and Mr. Wable, learned Counsel appearing for the Respondents.

2. Mr. Rajeshirke, learned counsel of the Appellant submitted that the only substantial question of law involved in this Second Appeal is:

Whether the Respondents i.e. original Plaintiffs have right to maintain the suit bearing Regular Civil Suit No. 144 of 2009 as they are not the legal heirs of Deceased Aba Dnyanu Kamble i.e. Original Plaintiff.

3. The factual position on record shows that the present

Appellant- Sarjerao Vilas Bilaskar has filed Regular Civil Suit No. 106 of 2005 for declaration and permanent injunction. It is the contention of the present Appellant in that suit that he is the absolute owner of the suit property on the basis of sale-deed dated 10th June 1997, which is styled as "गहाण स्वरूपी मुदत खरेदीपत्र". The learned Trial Court by judgment and decree dated 30th June 2009 dismissed the said suit. The present Appellant filed Regular Civil Appeal No. 173 of 2009 and the said appeal also came to be dismissed. It has been concurrently held in the said proceeding that the said document dated 10th June 1997 is of mortgage by conditional sale. Both the Courts have concurrently found that there is no substance in the case of the present Appellant that the said document is of absolute sale with condition to re-purchase. It is an admitted position that the judgment and decree dated 21st December 2016 passed by the learned District Judge-1, Kolhapur in Regular Civil Appeal No. 173 of 2009 dismissing the said appeal has attained finality as the present Appellant has not challenged the said judgment and decree.

4. The present Second Appeal is arising out of judgment and decree dated 12th December 2014 passed in Regular Civil Suit No. 144 of 2009 passed by Civil Judge, Junior Division, Panhala, District Kolhapur. The said judgment and decree of the learned

Trial Court was confirmed by the impugned judgment and decree dated 21st December 2016 passed by learned District Judge-1, Kolhapur in Regular Civil Appeal No. 3 of 2015. In said proceedings, the Trial Court as well as the Appellate Court has recorded a finding that the said document dated 10th June 1997 (Exhibit 60 in the present proceeding) is a transaction of mortgage by conditional sale. The learned Trial Court directed the original Plaintiff to deposit an amount of Rs.10,000/- in the Court within 15 days from the date of decree and thereafter within two months, the Defendant shall execute re-conveyance deed in favour of the Plaintiff and also handover possession to the Plaintiff.

5. The only contention raised by Mr. Rajeshirke is that the Plaintiffs have failed to prove that they are legal heirs of deceased Aba Dnyanu Kamble i.e. the original Plaintiff. In this particular case, admitted position is that there is heirship certificate issued in favour of the present Respondents by order dated 16th November, 1999, passed in Miscellaneous Civil Application No.12 of 1999 by C.J.J.D. Panhala, Tal-Panhala, Dist-Kolhapur. It has been held that the present Respondents are the legal heirs of deceased- Abaji Dnyanu Kamble. It is settled legal position that the heirship certificate operates in rem and till the same is in operation, it is binding on everybody.

6. As far as the merits of the case that document dated 10th June 1997 is of mortgage and not the sale-deed with condition to re-purchase, Mr. Rajeshirke has fairly submitted that in view of finding recorded in the earlier proceeding i.e. Regular Civil Suit No. 106 of 2005 which is confirmed in Regular Civil Appeal No. 173 of 2009 and as the Appellant has accepted said decree, it has to be held that the transaction is of mortgage and not of sale. The only contention raised by Mr. Rajeshirke is that the present Respondents are not the heirs of Abaji Kamble, however, in view of the decision of the learned Civil Judge, Junior Division, Panhala, District Kolhapur dated 16th October 1999 in Miscellaneous Civil Application No.12 of 1999 issuing heirship certificate in favour of the present Respondents declaring them as the legal heirs of deceased- Abaji Kamble there is no substance in the substantial question of law raised by Mr. Rajeshirke and therefore, the Second Appeal is dismissed, however, with no order as to costs.

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

(MADHAV J. JAMDAR, J.)