

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

**SECOND APPEAL NO.203 OF 2022
WITH
CIVIL APPLICATION NO.1020 OF 2019**

Manubai Jagannath Phalke
since deceased through legal heirs
Vikas Jagannath Phalke & Ors.

...Appellants

Versus

Rajaram Krishna Phalke & Ors.

...Respondents

Mr. D. D. Rananaware, for the Appellants.

Mr. Dilip Bodake, for Respondent Nos. 1 to 3.

CORAM : MADHAV J. JAMDAR, J.

DATED : 29th MARCH 2023

P.C. :

1. Heard Mr. Rananaware, learned counsel appearing for the Appellants and Mr. Dilip Bodake, learned counsel appearing for Respondent Nos. 1 to 3.

2. Mr. Rananaware submitted that Appellant who is original Plaintiff has filed suit seeking declaration that the suit property which has been purchased by Sale Deed dated 19th January 1991 in favour of Plaintiff and Defendant Nos. 1 to 3 is the exclusive property of the Plaintiff, as Plaintiff has only advanced the consideration.

3. Mr. Rananaware, learned counsel appearing for the Appellants submitted that substantial question of law raised in

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this Second Appeal is that the finding recorded by the learned Trial Court and the learned First Appellate Court that the Plaintiff failed to prove that she is the absolute owner of the suit property is not in accordance with law.

4. It is significant to note that the said registered Sale Deed is dated 19th January 1991 and the suit for declaration was filed on 28th April 2006 i.e. after about 15 years. It is further significant to note that during the pendency of the suit, original Plaintiff passed away and her heirs were brought on record. On behalf of Plaintiff, evidence affidavit was filed by Jagannath Krishna Phalke i.e. husband of original Plaintiff. In the evidence affidavit, he has stated that he was working as teacher and he was getting good income and the property was purchased by the consideration advanced by him and it was purchased only in the name of wife. It is his contention that the Defendant Nos. 1 to 3 have not signed the Sale Deed and only original Plaintiff has signed on the Sale Deed as purchaser. However, although he has stated in the cross-examination that the original Sale Deed is in his possession and there is no impediment for producing the Sale Deed on record, the said Sale Deed was not produced

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on record. Apart from that in the cross-examination P.W. 1 i.e. husband of Plaintiff admitted that he was witness to the said Sale Deed.

5. Both the Courts have concurrently found that the said Sale Deed has not only been executed in favour of Plaintiff and Defendant Nos. 1 to 3 and therefore, Plaintiff and Defendant Nos. 1 to 3 are the owners of the suit property but the said Sale Deed has been acted upon and recorded the finding that Plaintiff and Defendant Nos. 1 to 3 are in the possession of the suit property and their names are appearing in the revenue record immediately after purchase of the property.

6. Therefore, there is no substance in the substantial question of law raised in this Second Appeal by Mr. Rananaware.

7. The Second Appeal is dismissed in above terms with no order as to costs.

8. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same is dismissed as such.

[MADHAV J. JAMDAR, J.]