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

**SECOND APPEAL NO.139 OF 2022
WITH
INTERIM APPLICATION NO.933 OF 2022**

Sou. Sundar Kundlik Waikar & Anr. ...Appellants
Versus
Mahesh Rasiklal Doshi
since deceased through legal heirs
Smt. Sunita Mahesh Doshi & Ors. ...Respondents

Mr. Shailesh D. Chavan, for the Appellants.

Mr. Rupesh A. Zade, a/w. Ms. Priyanka Gupta, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 24th APRIL 2023**

P.C. :

1. Heard Mr. Chavan, learned counsel appearing for the Appellants and Mr. Zade, learned counsel appearing for the Respondents.

2. Mr. Chavan, learned counsel appearing for the Appellants submitted that following substantial questions of law arise in this Second Appeal.

(a) Whether the original Plaintiff has proved that the property as purchased by registered Sale

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Deed dated 24th December 1992, is the subject matter of the registered Sale Deed dated 2nd September 2009?

(b) Whether the learned First Appellate Court is justified in reversing the judgment of the learned Trial Court by which the suit filed by the Plaintiff was dismissed?

3. Before considering the substantial questions of law raised by the Appellants, it is necessary to set out certain factual position. The present Appellants are the original Defendant Nos. 2 and 3. Admittedly, Defendant No.1 is the owner of the suit property. It is the claim of the Plaintiffs that Defendant No.1 sold the suit property to the Plaintiffs by registered Sale Deed dated 24th December 1992. It appears that the Defendant No.1, although he was not having any right, title and interest with respect to the suit property as he had already transferred the suit property by registered Sale Deed dated 24th December 1992 in favour of the Plaintiffs, executed another registered Sale Deed dated 2nd September 2009 in favour of the Defendant Nos. 2 and 3. In view of the said Sale Deed, the Plaintiffs filed suit for declaration that they are the owners of the suit

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property and that compensatory cost be imposed on Defendant No.1 for the said fraud. The learned Trial Court dismissed the suit inter alia holding that Plaintiffs failed to prove that Defendant No.1 has sold the suit property to them by registered Sale Deed dated 24th December 1992 and that the same property is subject matter of registered Sale Deed dated 2nd September 2009. The Plaintiffs filed Regular Civil Appeal No.109 of 2014 and the learned First Appellate Court has come to the conclusion that the Plaintiffs have proved their ownership and they are in possession of the suit property and therefore, decreed the suit by granting declaration that Plaintiffs are owners of the suit property and restrained Defendant Nos. 1 to 3 from obstructing peaceful possession of the Plaintiffs over the suit property.

4. It is the contention of Mr. Chavan, learned counsel appearing for the Appellants that the property which is described in registered Sale Deed dated 24th December 1992 is different than the property which has been sold by the registered Sale Deed dated 2nd September 2009. However, the learned First Appellate Court after appreciating the evidence

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on record has found that the properties which are the subject matter of registered Sale Deed dated 24th December 1992, are the same as the property which is the subject matter of the registered Sale Deed dated 2nd September 2009. The learned Appellate Court has found that the evidence affidavit of the Defendant No.1 i.e. original owner clearly shows that the same was sold to the Plaintiffs. It is the contention of Defendant No.1 that the Plaintiffs were the money lenders and the property was given as security towards repayment of the loan and for that purpose, the registered Sale Deed is executed. It is significant to note that the said registered Sale Deed is dated 24th December 1992. It is admitted position that at no point of time the Defendant No.1 has filed suit seeking cancellation of said registered Sale Deed dated 24th December 1992.

5. In the present case, even if contentions raised in evidence affidavit of Defendant No.1 are accepted as it is, then also, it is his contention that the Sale Deed dated 24th December 1999 was executed merely as security for repayment of loan and said loan was repaid in or about 1994-1995. In spite of that, no such suit was filed at any point of time by the Defendant No.1.

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Therefore, it cannot be said that the said registered Sale Deed dated 24th December 1992 has no legal effect. The learned Appellate Court after examining the boundaries of both the properties held that both the properties are one and the same.

6. Mr. Rupesh Zade, learned counsel appearing for the Respondents rightly relied on the decision of the Supreme Court in the matter of **Alta Sidda Reddy vs. Busi Subba Reddy & Ors.**¹ In that case, it has been held that once the Defendant No.4 has sold the property, subsequent Sale Deed executed by her is not valid as she will have no right, title and interest as her right, title and interest has been divested when she executed earlier Sale Deed. Once the Defendant No.1 has executed registered Sale Deed in favour of Plaintiffs on 24th December 1992, the Defendant No.1 has got no right, title and interest to execute another Sale Deed in favour of Defendant Nos. 2 and 3 on 2nd September 2009.

7. As held hereinabove, it is significant to note that no suit was filed for setting aside or cancellation of the said registered Sale Deed dated 24th December 1992 at any point of time therefore, the Sale Deed is binding on the Defendant No.1.

1 [2010] 7 S.C.R. 624

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Therefore, there is no illegality committed by the learned First Appellate Court by holding that the Plaintiffs are the absolute owners of the suit property and therefore, granted injunction in their favour.

8. Mr. Chavan has also relied on pursis dated 11th March 2014 filed by the learned Advocate of the Plaintiffs stating that the Plaintiffs have given up their right with respect to Grampanchayat Property No.65. According to Mr. Chavan, learned counsel appearing for the Appellants, the said pursis has been signed by the Plaintiff No.4. However, Mr. Chavan, fairly admitted that the said pursis is not pointed out either to the learned Trial Court or to the learned First Appellate Court and there is no discussion with respect to the said pursis in the judgments of both the Courts.

9. Apart from that, it is to be noted that by registered Sale Deed dated 24th December 1992, two properties are purchased by the Plaintiff i.e. Property Nos.64 and 65. By said pursis, claim regarding Grampanchayat Property No.65 has been allegedly given up by Plaintiff No.4. Mr. Chavan fairly admits that even according to his contention, the said pursis is only

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signed by Plaintiff No.4. The suit has been filed by five Plaintiffs seeking declaration of their ownership with respect to suit properties. Therefore, said pursis will not bind all the Plaintiffs. Therefore, there is no substance in the said contention raised by Mr. Chavan, learned counsel appearing for the Appellants.

10. Accordingly, the Second Appeal is dismissed in above terms however, with no order as to costs.

11. As the Second Appeal is dismissed, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]