

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

**SECOND APPEAL NO. 553 OF 2022
WITH
INTERIM APPLICATION NO. 17115 OF 2022
WITH
INTERIM APPLICATION NO. 16810 OF 2022
IN
SECOND APPEAL NO. 553 OF 2022**

Mangal Shankar Shelar and anr. Appellants
v/s.
Vinod Mahadev @ Haribhau Shelar
and ors. Respondents

Mr. Prakash Sutar for the Appellants.
Mr. Vaibhav Gaikwad for Respondent No.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th OCTOBER, 2023.

P. C. :-

. This is an Appeal under section 100 of the Code of Civil Procedure challenging the judgment and order dated 06/05/2022 in Regular Civil Appeal No.94/2019. By the impugned judgment, the learned District Judge, Satara dismissed the Appeal filed by the Appellant herein and thereby confirmed the judgment and decree dated 28/02/2019 passed by the 4th Joint Civil Judge, Senior Division, Satara in Regular Civil Suit No.107/2013 declaring the sale deed dated 23/12/2011 executed by the Appellant No.1 in favour of Appellant

No.2 as illegal, null and void. By the impugned judgment and decree, the trial court had also directed the Appellants to hand over vacant and peaceful possession of the suit premises to the Respondent within two months.

2. Heard learned counsel for the Appellants and learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The dispute is essentially in respect of property bearing No.12-B admeasuring 1224 sq. ft. situated at Village Bhiwadi, Taluka Koregaon, District Satara. It is the case of the Respondent – plaintiff that Dagdu who is the father of the Appellant No.2 and grand father of the Respondent – plaintiff had constructed House No.12 from joint family income. In the year 1998, the Respondent – plaintiff constructed House No.12-B adjoining House No.12. It is the case of the Respondent – plaintiff that House No.12-B is their self-acquired property. It is stated that in the year 2003, the Respondent No.1 and the Appellants had agreed to sell 1/3rd share of the Respondent from old House No.12 to pay off the debt. It is alleged that the Appellant No.2 got a Power of Attorney executed on 17/11/2004 for the purpose of selling

the 1/3rd share. However, he misused the power of attorney and sold the House No.12-B, which is a self-acquired property of the Respondent – plaintiff to Appellant No.1, his sister-in-law. It is on these basis that the Respondent – plaintiff filed a suit for cancellation of the sale deed and for other consequential reliefs.

4. The Trial Court, after analyzing and appreciating the evidence on record, has recorded a finding that the property bearing Gram Panchayat House No.12-B is a self-acquired property of the Respondent – plaintiff. Even otherwise, the fact that the House No.12-B is a self acquired property of the Respondent is not specifically denied. The trial Court as well as the Appellate Court have also recorded a finding that the Respondent-plaintiff had in fact executed a power of attorney in favour of the Appellant No.2 for slae of his 1/3rd share in the joint property and that the Appellant No.2 misused the said power of attorney and sold the self-acquired property of the Appellant No.2 in favour of the Appellant No.1, who is his sister-in-law.

5. The findings of the trial court as well as of the Appellate Court are based on the evidence on record and are not perverse. Having gone through the material on record, in my considered view, no case is

made out to interfere with the concurrent findings of the Courts below. Since no substantial question of law is involved, the Appeal is dismissed.

6. Pending Interim Application/s stand disposed of in view of dismissal of the Appeal.

**PREETI
HEERO
JAYANI**

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(SMT. ANUJA PRABHUDESSAI, J.)