



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 617 OF 1992

1. Janardan Janji Rade,
Since deceased,
through his legal heirs,
 - 1) Smt. Shantabai Janardan Rade,
Age : 75 Years, Occ. Nil
 - 2) Shri. Kishor Janardan Mahajn,
Age : 48 Years Occ. Profession,
 - 3) Shri. Chandrakant Janardan Mahajan,
Age : 44 Years, Occ. Business,
 - 4) Smt. Jayashree Arvind Nehete,
Age : 46 Years, Occ. Nil
R/o. Ganeshwadi, Tal. & Dist. Jalgaon Appellants
(Orig. Plaintiff)

VERSUS

1. Devram Dagdu Chaudhari, (deceased)
Through legal representative.
 - 1-a) Vasant Davram Chaudhari,
Age : 34 years, Occ. Labour,
Resident of Mehroon Taluka and Dist.
Jalgaon
 - 1-b) Prabhavati w/o Govind Bandose,
Age : 27 years, Occ. Household,
resident of Kanada Maruti Lane,
H.No. 1562, Kshem Kalyani wadi
Nashik city Nashik
2. Vasant Devram Chaudhari,
Age : 35 Years, Occ. Nil
Resident of Mehroon District Jalgaon Respondents
(Ori. Defendant
No.1 and 2)

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Advocate for the Appellants : Mr. G. V. Wani

Advocate for Respondent Nos. 1 and 2 : Mr. A.S.Deshpande

CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 15.03.2024.

Judgment Pronounced on : 07.05.2024.

Judgment :

1. The original plaintiff Janardan Janji Rade, now no more and represented by his legal representatives as mentioned in title clause, has preferred this Second Appeal against the Judgment and decree dated 30th December, 1985, passed by the learned Additional District Judge, Jalgaon i.e. the learned First Appellate Court, in R.C.A. No. 2 of 1981. The learned First Appellate Court has allowed the appeal by setting- aside the judgment and decree dated 30.10.1981, passed by the learned IVth Joint Civil Judge (Senior Division), Jalgaon (hereinafter referred to as “the learned trial Court”) in R.C.S. No. 468 of 1978 whereby the said suit was decreed. To avoid the ambiguity, the parties are referred as per their original status in the suit.

2. The facts giving rises to the present appeal are as under :-

3. The plaintiff had filed aforesaid suit for possession of the ground floor of the suit house i.e. Grampanchayat House No. 262 situated at Mehroon, Taluka and District Jalgaon. According to the plaintiff, the suit house was owned by one Chanbas Bhikari Basve and he purchased the same for the

consideration of Rs. 2,000/- on 10.08.1976. The possession of the said house was to be delivered subsequently and for that purpose the amount of Rs. 500/- from the aforesaid consideration was retained by the plaintiff. At the time of purchase, Chanbas was staying in the suit house and since his alternate accommodation could not be arranged, the said amount of Rs. 500/- out of the total consideration was retained. After the arrangement of Chanbas in respect of his residence, he on 15.06.1978, accepted the remaining consideration of Rs. 500/- in cash and gave the suit house in possession of the plaintiff. Plaintiff put his locks to the said house on ground floor and first floor. However, on the same day, the respondents/defendants put their lock on the lock of plaintiff on the premises of ground floor and without seeking permission, broke open the lock of the plaintiff and illegally possessed the ground floor of the suit house. On making enquiry by the plaintiff in respect of the said illegal act of the defendants, the defendant No.2 gave evasive answers to the plaintiff and also threatened to beat him. The plaintiff then filed complaint in the police station. Thereafter, though the defendants took out their lock to the premises on the first floor, but refused to vacate the ground floor of the suit house. Accordingly, plaintiff issued notice dated 03.07.1978 to

defendants for seeking possession of the ground floor. But the defendants replied the said notice on 19.07.1978 and refused to give the possession as mentioned. Thus, the plaintiff filed the suit as aforesaid.

4. On the contrary, the defendants came with a case that the suit house was originally owned by one Lakhuappa/ Laxmiappa, who died leaving behind his only daughter Maibai Bhikari Basve. Maibai also died somewhere in the year 1973 leaving behind two children namely daughter Padmabai and son Chanbas. Padmabai is the wife of defendant No.1 and mother of defendant No.2. It is claimed by the defendants that they are residing along with Padmabai on the ground floor of the suit house since 1954 and after death of Maibai, Padmabai and Chanbas were the legal heirs and joint owner of the suit house. Further according to them, Chanbas was having bad habits, and therefore, he started selling Maibai's estate. For that purpose, one house of Maibai has already been sold by Chanbas to one Madhav Laxman Sanap, and therefore, in the suit house there was no share of Chanbas, but due to his bad habits he sold the suit house on 10.08.1976. Thus, according to the defendants, Chanbus was not the sole owner of the suit house, and therefore, the aforesaid sale deed is not binding

upon them. According to them, nothing happened as alleged by the plaintiff that they forcibly took possession of the suit house, specifically of the ground floor. Thus, they prayed for dismissal of the suit.

5. The learned trial Court, after conducting the trial, decreed the suit of the plaintiff by observing that since the defendants admitted that Padmabai, during the life time of Chanbas, did not raise any objection when the name of Chanbas was recorded in the name of Grampanchayat record, it indicated that no share was allotted to the Padmabai. Further, the learned trial Court also observed that the defendants were in fact residing in some other house and not in the suit house.

6. However, the learned First Appellate Court has set- aside the judgment and decree passed by the learned trial Court and dismissed the suit of the appellant/plaintiff by holding that Chanbas had not become an exclusive owner of the suit house and Padmabai was also having share in it, and as such the sale deed was bad-in-law.

7. The learned counsel for the appellant/plaintiff vehemently argued that the learned First Appellate Court has

not made any discussion about the sale deed and thus the sale deed being the document of title has to be accepted, as no counter-claim is filed by the defendants/respondents. However, the learned counsel for the appellant did not dispute the relationship of Chanbas and Padamabai i.e. the wife of defendant No.1.

8. On the contrary, the learned counsel for respondents supported the judgment of the learned First Appellate Court. According to him, Chanbas had accepted in the sale deed itself that the suit house was ancestral property. Further, when the relationship between Chanbus and Padmabai is not in dispute, then Padmabai's right in the suit house was definitely crystallized on the death of her mother Maibai. According to him, even if there is no counter-claim for partition, possession and for cancellation of sale deed, the erstwhile owner Chanbas cannot become absolute owner of the entire suit house. Accordingly, he claimed dismissal of the appeal.

09. Heard rival submissions and also perused the document along with the record and proceeding of both the lower Courts.

10. It is significant to note that, the sale-deed and possession receipt at Exhibits 27 and 28 have been taken back by the

plaintiff without leaving their certified or Xerox copies on record. In the light of rival contentions, this Court has formulated following Substantial Questions of Law :-

- (i) Whether the Appellate Court was right in discarding the registered sale-deed by merely observing that defendant had share in the property especially when no declaration was sought to that effect ?
- (ii) Whether the finding of Appellate Court in respect of registered sale deed being not binding, is proper ?

11. It is extremely important to note that the plaintiff has not challenged relationship between Chanbas and Padmabai who is the wife of defendant No.1 Devram. Further, the record shows that Chanbas and Padmbai had inherited the suit house from Maibai, who died on 01.03.1973. Though the learned counsel for the plaintiff pointed out that the respondents/defendants failed to establish that there was partition between Chanbas Padmabai in respect of properties of Maibai, however, the partition theory is not specifically averred by the defendants in their written statement. They have only stated that one house of Maibai was already sold by Chanbas to one Madhav Sanap and therefore, he lost right in the suit house. This cannot be treated as theory of partition put-forth by the defendants. On the contrary, when the

relationship between Chanbas and Padmabai being an admitted position, it is evident that both are having equal rights in the suit house. Admittedly, the name of Padmabai was not recorded in Grampanchayat record of the suit house but mere absence of name of Padmabai in the record of rights of the suit house does not discard her from the joint ownership of the suit house. Moreover, Chanbas himself has stated in the sale deed Exhibit 27 that the said property was ancestral property. Further, Chanbas is totally silent as to how he acquired the suit house. Moreover, though the present plaintiff claimed to have purchased the suit house, but the judgment of the learned First Appellate Court indicates that nothing was mentioned in the sale deed about handing over of possession of the suit house. On the contrary, the possession receipt attached to the sale-deed which is separately exhibited as Exhibit 28, was appeared to be written on 20.03.1978. Further, though the plaintiff claimed that after putting up locks by the defendants on his locks, he had filed complaint to the police station, but no documentary evidence has been produced to that effect and no one from the said police station was summoned for proving the said fact.

12. On the contrary, it appears that defendants have come with a case that they are residing at ground floor of the suit

house since beginning, that means during the life time of Padmabai and therefore, in absence of any evidence in respect of the alleged forceful possession as claimed by the plaintiff, it cannot be established that the defendants had in fact taken forceful possession of the ground floor of the suit house.

13. The learned counsel, in view of the substantial question of law formulated by this Court, vehemently submitted that the learned First Appellate Court has definitely erred in discarding the registered sale-deed by merely observing that the defendants have shared in the property, especially when no declaration was sought to that effect. However, when the relationship between Chanbas and Padmabai has been admitted by the plaintiff, then it was incumbent upon the plaintiff to show that Chanbas had become absolute owner of the property after the death of Maibai and then he sold the suit house under the sale-deed. It is extremely important to note that Chanbas has not stated in the sale deed as to how he became the sole owner of the suit house. On the contrary, the defendants have come with a case that after the death of Maibai, Chanbas and Padmabai became joint owner of the suit house to the extent of 1/2 share each. As such, when Chanbas was not the sole owner of the suit house, then the

registered sale deed executed by him in favour of the plaintiff can give him title only to the extent of share of Chanbas and not of the defendants. In fact, it was for the plaintiff to establish the said fact that by way of disputed sale deed that he became absolute owner of the entire suit house. Therefore, there appears no perversity in the findings of the learned First Appellate Court in holding that the sale deed is not binding upon the defendants. The learned Appellate Court has rightly considered the entire oral and documentary evidence in proper perspective and has rightly set-aside the judgment and decree of the learned trial Court. Therefore, considering all these aspects, no substantial questions of law as formulated, appear to have been involved in this matter and there is no substance in the Second Appeal which stands dismissed accordingly.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni