



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 26 OF 2024
WITH CA/1581/2024 IN SA/26/2024

Sumanbai w/o. Dnyando Shinde,
Age : 61 years, Occ. : Agri. & Household,
R/o. : Wambori, Bhite Galli,
Tq. Rahuri, Dist. Ahmednagar

... APPELLANT
(Ori. Defendant)

VERSUS

Maruti Dattatraya Radhvane,
Age : 68 years, Occ. : Agriculture,
R/o. : Saraswati Colony, Deokar Vasti,
Ward No.7, Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

... RESPONDENT
(Ori. Plaintiff)

...
Mr. D.S. Bhapkar – Advocate for Appellant
Mr. A.B. Jagtap – Advocate for Respondent

....
CORAM : SANDIPKUMAR C. MORE, J.
DATE : 23rd February, 2024

ORDER :

1. Heard rival submissions at admission stage and also perused the entire documents on record.
2. The appellant is original defendant in Regular Civil Suit No.690 of 2017 has preferred this appeal against the judgment and decree of Regular Civil Appeal No. 143 of 2022 dated 05.12.2023 whereby the learned First Appellate Court i.e. District Judge at Ahmednagar has confirmed the judgment and decree passed by

the 2nd Joint Civil Judge (Junior Division) Rahuri, Dist. Ahmednagar i.e. learned Trial Court. In R.C.S. No.690 of 2017 by which the suit for partition and separate possession filed by the respondent i.e. original plaintiff has been allowed.

3. Background facts of the case are as under :

The present respondent – plaintiff filed the aforesaid R.C.S. No.690 of 2017 for seeking partition and separate possession of the suit properties namely Gut Nos.169/1 and 169/2 situated at village Dhamori Khurd to the extent of his 1/2 share in the same. The learned Trial Court decreed the suit against which the present appellant filed appeal before the learned First Appellate Court bearing R.C.A. No.143 of 2022 but the same was dismissed. As such, the present Second Appeal is preferred against the concurrent findings of both the Courts below.

4. Learned Counsel for appellant – defendant though submitted almost twelve substantial questions of law but while arguing at bar, he pointed out that main substantial question of law is that, both the learned Courts below did not consider the aspect of fraud which was played by the respondent – plaintiff upon present appellant by taking disadvantage of her illiteracy. He pointed out

that, the suit properties though appears to be purchased jointly by the appellant and respondent but the respondent – brother had in fact taken disadvantage of illiteracy of appellant, who is her sister and keeping her in dark got executed the sale-deed of the suit properties in their joint names.

5. On the contrary, learned Counsel for respondent vehemently argued that, both the Courts below have unanimously held that, though the suit properties were purchased by the present parties and there was no element of fraud on the part of respondent – brother.

6. On perusal of record it appears that, the sale-deed of the suit properties is executed in favour of respondent as well as appellant. Moreover, it is also admitted in the sale-deed that, consideration was paid by both. It is also significant to note that, at the time of sale-deed there was no necessity of signatures of the purchasers below the contents of the sale-deed. Learned Counsel for appellant pointed out that, on the sale-deed only signature of defendant appears and, therefore, the Courts below should have observed that, she exclusively purchased the suit properties. However, on perusal of the sale-deed it appears that, her signature on the same

is there as a person who merely presented the deed for registration. Below the recitals of sale-deed her signature is not there and only the signatures of erstwhile owner and witnesses are there. Thus, there appears no force in the submissions of learned Counsel for appellant that, merely because only signature of appellant is there on the sale-deed, she was exclusive owner of the suit properties.

7. It is extremely important to note that, prior to the sale of the suit properties, an agreement of sale was also registered by the erstwhile owner of the suit properties in favour of present respondent as well as appellant. In the said agreement of sale also there is only signature of then vendor. There are no signatures either of present appellant or the respondent being the purchasers below the recitals as it was not necessary at all at the relevant time. Further, the conduct of the appellant subsequent to the purchase of the suit properties is also important. After purchasing the suit properties she had given her 1/2 share on lease twice. Had it been the case that, she had purchased entire suit properties then she would have given entire area of suit properties on lease but she did not do so. This clearly indicates that, she was aware

that she had purchase only 1/2 share of the suit properties. Not only this but in the cross-examination itself she has clearly admitted that, she alongwith her brother jointly had purchased the suit properties from erstwhile owner Bajirao Kalhapure. Moreover, she has also admitted in the cross-examination that, she is educated upto 6th standard in Marathi medium. Therefore, the contention raised by the learned Counsel for appellant that, the present respondent – brother cheated her by taking disadvantage of her illiteracy appears absolutely false.

8. Therefore, considering all the documents in Paperbook of learned First Appellate Court and the judgment delivered by the learned Trial Court, it appears that both the Courts below considered each and every aspect of the contentions raised by the present appellant in proper perspective and in the light of documentary evidence. Therefore, there is no substantial questions of law involved in the Second Appeal and thus, the Second Appeal stands dismissed at admission stage.

9. The Second Appeal is accordingly disposed of alongwith Civil Application No.1581 of 2024.

[SANDIPKUMAR C. MORE, J.]