



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 370 OF 2023
WITH CIVIL APPLICATION NO. 8501 OF 2023

- (1) Mrs. Vandana Gaurihar Ambekar,
Age : 56 years, Occ. : Household,
R/o. : Land No.6, City Survey No.8395,
Gajanan Colony, Jalgaon,
Tq. & Dist. Jalgaon

... APPELLANT

(Ori. Plaintiff)

VERSUS

- (1) Shri. Nandlal Hiralal Bhavsar,
Age : 58 years, Occ. : Photographer,
R/o. : Gat No.126, Bhikamchand
Jain Nagar, Pimprala Road, near Prem
Nagar, Jalgaon, Dist. Jalgaon
- (2) The Commissioner,
Jalgaon City Municipal Corporation
Jalgaon, Dist. Jalgaon

... RESPONDENTS

(Ori. Defendants)

...
Mr. Ravibhushan P. Adgaonkar – Advocate for Appellant

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 3rd July, 2024

ORDER :

1. Heard learned Counsel for appellant, who is the original plaintiff on admission. The present Second Appeal has been filed against the concurrent findings of both the learned Courts below.

2. Brief facts of the case are as under :

The present appellant being daughter-in-law of Kamalabai Rudreshwar Ambekar has filed suit for declaration of her ownership right and perpetual injunction in respect of plot No. 6 admeasuring 1310 sq. ft. having City Survey No.8395 situated at Jalgaon ("*suit plot*" for short). According to appellant/plaintiff, she filed Regular Civil Suit No. 304 of 2014 for declaring that the aforesaid suit plot was jointly purchased by her mother-in-law, Kamalabai Rudreshwar Ambekar and Pundalik Mahadev Ambekar, cousin father-in-law on 20.09.1973 vide registered sale-deed. There is no declaration of their respective shares in the suit plot. Thereafter some construction was made on the suit plot in the year 1975-76. Cousin father-in-law of the appellant died in the year 1990 and on his death her mother-in-law, Kamalabai Rudreshwar Ambekar became the owner of the entire suit plot. However, since her cousin father-in-law was not having any issue, he bequeathed his share in the suit plot to his nephew Ashok Keshav Ambekar by way of registered will-deed. Thereafter, Ashok sold the said share to present respondent No.1 i.e. original defendant No.1 vide registered sale-deed and accordingly, got mutated his name in the record of rights of suit

plot on 08.12.1997 and therefore, the present appellant filed suit for prayers mentioned above against the respondents.

3. On the contrary, respondent No.1 vide his written statement (Exhibit - 33) resisted the suit by denying all the adverse contentions made against him. He also raised certain objections on the grounds such as non-payment of requisite Court fee and suit being barred by limitation. He claimed that, Kamalabai Rudreshwar Ambekar, in her lifetime had, in fact, filed Regular Civil Suit No. 154 of 2011 for declaration and injunction in respect of alleged construction over the suit plot, but after her death her legal representatives Gaurihar Ambekar and Malti Ambekar withdrew the said suit. He further contended that, Ashok Keshav Ambekar had become owner of half share of the suit plot through will-deed dated 01.11.1983 executed by erstwhile owner of the suit plot Pundlik Mahadev Ambekar and said half share had been purchased by him from Ashok Keshav Ambekar under the registered sale-deed. According to him, Kamalabai Rudreshwar Ambekar and Ashok Keshav Ambekar had entered into compromise deed in respect of partition of the suit plot between them and accordingly, Ashok Keshav Ambekar had become owner of the half plot to the extent of 655 sq. mts. at

east-north side. It is also contended by him that, an amount of Rs.17,000/- was given to Kamalabai Rudreshwar Ambekar on 14.02.1997 for removing her temporary shed in the said share of Ashok Keshav Ambekar. Thus, respondent No.1 claimed dismissal of the suit.

4. Learned Civil Judge Senior Division, Jalgaon i.e. learned Trial Court dismissed the said suit vide judgment and decree dated 09.08.2018 and thereafter the learned District Judge - 4, Jalgaon also dismissed Regular Civil Appeal No. 38 of 2019 filed against the said judgment and decree vide judgment and order dated 01.03.2023 and hence this appeal.

5. Learned Counsel for appellant vehemently argued that, the suit plot was purchased jointly by Kamalabai Rudreshwar Ambekar and Pundlik Mahadev Ambekar by way of registered sale-deed dated 20.09.1973 and, since there was no partition between themselves, the suit plot could not have transferred by Pundlik Mahadev Ambekar by will-deed as well as through sale-deed by Ashok Keshav Ambekar. He pointed out that, there are so many substantial questions of law involved in this matter. However, on going through those substantial questions of law

alongwith pleadings of the parties and the judgments of both the learned Courts below, only following substantial questions of law appear to be involved in this matter :

- (a) Whether the present appellant/plaintiff can become owner of the entire suit plot when the same was purchased jointly by her mother-in-law and cousin father-in-law ?
- (b) Whether there was any bar for transfer of half share of suit plot either by Pundlik Mahadev Ambekar or his nephew Ashok Keshav Ambekar ?

6. It is extremely important to note that, though the appellant/plaintiff had claimed that Kamalabai Rudreshwar Ambekar after demise of Pundlik Mahadev Ambekar had become owner of entire suit plot, but she herself has pleaded in the plaint that, the suit plot was jointly purchased by Kamalabai Rudreshwar Ambekar and Pundlik Mahadev Ambekar. It is to be noted here that, appellant had never cared to produce on record registered sale-deed dated 20.09.1973 by which Kamalabai Rudreshwar Ambekar and Pundlik Mahadev Ambekar jointly purchased the suit plot. Therefore, in the light of this admitted position it cannot be held that Kamalabai Rudreshwar Ambekar had become

exclusive owner of the suit plot after the death of Pundlik Mahadev Ambekar. Admittedly, the copy of sale-deed was allowed to be filed on record vide order of this Court dated 08.05.2024. Even on going through the said copy of the sale-deed, there is no apportionment of shares of Kamalabai Rudreshwar Ambekar and Pundlik Mahadev Ambekar in the suit plot at the time of purchase. Therefore, in absence of such apportionment it has to be presumed that, Kamalabai Rudreshwar Ambekar and Pundlik Mahadev Ambekar had become owner of suit plot in equal share. Further, the record shows that Kamalabai Rudreshwar Ambekar had made certain unauthorized construction on the share of respondent No.1 and for removing the same Kamalabai Rudreshwar Ambekar had accepted an amount of Rs.17,000/- on 14.02.1997. Even receipt to that effect executed by Kamalabai Rudreshwar Ambekar had been produced on record before the learned Trial Court. Moreover, in cross-examination itself the appellant/plaintiff admitted that, Ashok Keshav Ambekar had given Rs.17,000/- to her mother-in-law i.e. Kamalabai Rudreshwar Ambekar for removal of shed which was on his share. The said admission definitely indicates that, there must be division between

Kamalabai Rudreshwar Ambekar and Ashok Keshav Ambekar in respect of the suit plot. Further, the will-deed executed by Pundlik Mahadev Ambekar in favour of his nephew Ashok Keshav Ambekar has been duly proved and therefore, it can safely be inferred that Pundlik Mahadev Ambekar had successfully bequeathed his share in the suit plot by way of will-deed to Ashok Keshav Ambekar, who thereafter sold the same to present respondent No.1 vide registered sale-deed.

7. Thus, from the case of appellant/plaintiff, it is clear that, she was not the exclusive owner of suit plot. Moreover, even if it is presumed that, there was no partition in respect of suit plot between Pundlik Mahadev Ambekar and Kamalabai Rudreshwar Ambekar or Kamalabai Rudreshwar Ambekar and Ashok Keshav Ambekar, then also the appellant/plaintiff claiming through Kamalabai Rudreshwar Ambekar cannot demand ownership of entire suit plot. On the contrary, if she comes with such case then she will have to file a partition suit, but certainly not the suit for declaration of her ownership right over the entire suit plot. Further, it has also come on record that, the erstwhile owner Kamalabai Rudreshwar Ambekar had also removed her alleged unauthorized construction by accepting such

consideration and therefore, she is also not entitled to claim any injunction as prayed. Considering all these aspects and the concurrent findings of both the learned Courts below, there appear no substantial questions of law involved in this Second Appeal as raised by the appellant/plaintiff. In view of the same, the present Second Appeal stands dismissed at admission stage alongwith pending Civil Application No. 8501 of 2023.

8. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE