

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 339 OF 2020****WITH****INTERIM APPLICATION NO. 583 OF 2020****IN****SECOND APPEAL NO. 339 OF 2020**

Sou. Sujata Shankarrao Powar

.. Appellant

Versus

Sandip Tukaram Patil & Ors.

.. Respondents

...

Mr. Sugandh B. Deshmukh for the Appellant.**Ms. Shivani Kondekar** a/w Ms. Disha Rathod i/b Mr. Satyavrat Joshi for Respondents.

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CORAM : SANDEEP V. MARNE J.**DATE : 03 JANUARY, 2024.****P. C.:-**

1) The Appellant has filed the present Appeal challenging the Judgment and Order dated 28 November, 2019 passed by District Court, Kolhapur in Regular Civil Appeal No.252 of 2017 thereby, confirming the Judgment and Decree dated 30 August, 2017 passed by Civil Judge Junior Division Gargoti, in Regular Civil Suit No. 121 of 2012.

2) I have heard Mr. Deshmukh, the learned counsel appearing for the Appellant. He would submit that several substantial questions of law are involved in the present Second Appeal. That the suit filed by the Plaintiff was not within the period of limitation. He would further submit that Appellant/Defendant No. 1 is purchaser of the suit property by virtue of sale deed dated 18 November 2002. That, a specific prayer was made in the plaint seeking a declaration that the said sale deed is not binding on Plaintiff. The said relief has not been granted by the Trial Court in decree dated 30 August 2017. That, therefore, the declaration sought in prayer clause (c) of the plaint about sale deed not being binding on Plaintiff is impliedly rejected. That since sale deed executed in favour of the Appellant is neither set aside nor held to be not binding on the Plaintiff, the sale deed would continue to subsist. That, in view of subsistence of that sale deed, the certificate of sale issued in favour of the Plaintiff cannot have the effect of transfer of title in the suit property in Plaintiff's favour. Mr. Deshmukh would further contend that the sale certificate is otherwise not registered as per mandatory requirement of the Registration Act 1908 and that therefore the sale certificate cannot have the effect of vesting of title in respect of the suit property in Plaintiff. That in pursuance of the sale

certificate, no deed is executed in favour of the Plaintiff to evidence transfer of title nor such deed is registered. That therefore, Plaintiff did not acquire any right, title or interest in the suit property. That the suit of the Plaintiff was clearly barred by limitation as the sale certificate was issued on 11 March 2005 whereas the suit was filed on 2 August, 2012.

3) *Per contra* Ms. Kondekar, learned counsel appearing for Respondent No.1 would oppose the Appeal submitting that no substantial question of law is involved in the Appeal for its admission.

4) I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the Orders passed by the trial Court and the First Appellate Court. I am not in agreement with the submission of Mr. Deshmukh that The trial Court has not recorded any finding about validity of the sale deed executed in Appellant's favour on 18 November 2002. In para 25 of its Judgment, the trial Court has recorded a specific finding that the sale deed is voidable at the option of Defendant No.2. The said finding is recorded by holding that the sale deed is executed by the original owner in Appellant's favour despite full knowledge of the fact that deed of continuing guarantee in respect

of the suit property was already executed in favour of the Defendant No.2-Society. The trial Court has arrived at a conclusion that the sale deed was executed to defraud the society and therefore the same is voidable at the instance of the creditor under provisions of Section 53 of the Transfer of Property Act. It therefore cannot be contended that the sale deed is valid or subsisting.

5) So far as the issue of registration of the certificate of sale is concerned, the Lower Appellate Court has held that registration of such sale certificate is exempted under provisions of Section 17 (2) (xii) of the Registration Act. The learned counsel for the Appellant has not been able to demonstrate as to how the said finding recorded by the Lower Appellate Court is not in accordance with the statutory framework of the Registration Act. No provision of law is brought to my notice which requires execution of a separate deed after issuance of certificate of sale. Therefore, both the objections raised by the Appellant with regard to the validity of certificate of sale are totally baseless.

6) Both the trial Court as well as the Lower Appellate Court have correctly appreciated the position that Appellant had raised objection to the auction process and his objection was rejected.

Thus the auction is validly held after rejection of objection raised by Appellant. Rejection of objection has attained finality. Both the Courts have held that the Appellant is attempting to frustrate the sale validly executed in favour of the Plaintiff in accordance with the provisions of the Maharashtra Co-operative Societies Act 1960 and the Maharashtra Cooperative Societies Rules 1961.

7) So far as the aspect of limitation is concerned, the suit is filed seeking a declaration that Plaintiff has become owner of the suit property. It was not necessary for him to file said suit within three years of execution of sale certificate in its favour. The cause of action arose when Defendant No.1/Appellant obstructed the Plaintiff from taking over possession of the suit property and when he continued constructions over the suit property. In that view of the matter, it cannot be held that the suit was barred by limitation.

8) After considering the entire conspectus of the case, I am of the view that no substantial question of law is involved in the present Appeal. The second Appeal is accordingly rejected.

9) In view of rejection of Second Appeal, Interim Application No. 583 of 2020 does not survive. The same also stands disposed of.

[SANDEEP V. MARNE J.]