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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 629 OF 2016**

Kashinath Govind Dalavi (D/H) ... Appellant

vs.

Ramu Maruti Dalavi (D/H) and Anr ... Respondents

Ms. Naina P. Boraste a/w. Girish Agrawal, for Appellant.

Mr. Dilip Bodake, for Respondent.

CORAM : GAURI GODSE, J.

DATED : 20th JUNE 2024

ORDER:

1. This Second Appeal is filed by the original plaintiffs to challenge the concurrent judgments and decrees dismissing their suit. The suit was initially filed for simplicitor injunction and subsequently, by way of an amendment alternate prayer for possession was made.

2. Learned counsel for the appellants submitted that the suit property was a self acquired exclusive property of Gangaram, and he had executed an agreement in favour of the plaintiffs. She further submitted that after the death of Gangaram, his wife executed the sale deed in favour of the plaintiffs. It is further submitted that at the time of execution of the agreement, the plaintiffs were put in possession of the suit property. Since there were obstructions to the

plaintiffs' possession, the suit was filed seeking an injunction. She further submits that during the pendency of the suit, the original plaintiff was dispossessed and, hence, by way of amendment, prayer for possession was also made.

3. Learned counsel for the appellants further submitted that defendant no.1 came up with the case that the suit property was purchased in the name of Gangaram out of a joint family nucleus. Hence, according to the learned counsel for the appellants, it was necessary to frame the issue as to whether there was a partition between Gangaram and his brother. She, thus, submitted that in the absence of any issue being framed on the point of partition, the suit filed based on title could not have been dismissed. She, thus, submits that the Second Appeal will require consideration on the point of framing proper issues with regard to the issue of partition as pleaded by defendant no.1.

4. I have considered the submissions. Perused the papers. The execution of an agreement for sale and the subsequent sale deed in the plaintiffs' favour is not in dispute. It is also not in dispute that prior to the sale deed executed by Gangaram's wife in favour of plaintiffs, defendant no.1-Ramu had already executed sale deed in favour of defendant no.2 on the basis of his name entered in the

revenue records as owner as per the partition. Subsequently, defendant no.2 executed a sale deed in favour of defendant no.3. However, the suit was filed simplicitor for an injunction based on exclusive title. The suit was filed without seeking any declaration with regard to the sale deeds in favour of defendant nos. 2 and 3 and without any declaration of the plaintiffs' title based on the contention that Gangaram, being the exclusive owner of the suit property, was entitled to alienate the same and therefore, the plaintiffs acquired absolute title in view of execution of the sale deed by Gangaram's wife.

5. The issue with regard to the plaintiffs' possession is not proved. The case of dispossession during the pendency of the suit is not accepted by both the Courts. Thus, the question with regard to the plaintiffs' claim of possession is not accepted by both the Courts. So far as the title of the plaintiffs is concerned, in the absence of any declaration of their title and in the absence of any challenge to the sale deed executed by defendant no.1 in favour of defendant no.2 and subsequently in favour of defendant no.3, the simplicitor injunction suit could not have been decreed. Thus, in the absence of any specific declaration of title, no fault can be found for not framing the issue on partition as sought to be argued on behalf

of the appellant. Even otherwise, both the courts have correctly appreciated the pleadings and evidence and recorded reasons for not accepting the exclusive title of Gangaram and accepting defendant no. 1's title based on the allotment of the suit property in favour of defendant no. 1 by way of partition.

6. Hence, considering the evidence on record and the nature of suit filed for simplicitor injunction and later on for possession, there was no reason for framing separate issue for partition.

7. The Second Appeal does not raise any other substantial question of law. Hence, the Second appeal is dismissed.

(GAURI GODSE, J.)