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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 336 OF 2024
WITH
INTERIM APPLICATION NO. 8884 OF 2024
IN
SECOND APPEAL NO. 336 OF 2024

Rajaram Gundu Pawar ... Appellant

Vs.

Ranjana Shivram Pawar ... Respondent

Mr. Umesh H.Pawar a/w. Mr. Sagar Sonawane for the Appellant.
Mr. Abhijit Adagule for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 16th JULY 2024

ORDER :

1. This Second Appeal is filed by the original plaintiff to challenge the concurrent Judgments and decrees dismissing the suit for partition and separate possession. Both the Courts have dismissed the suit on the ground that the suit property is an independent property of the predecessor in title of defendant nos. 1 and 2, i.e. Shivram.

2. Learned counsel for the appellant submitted that the housing society where the suit property is situated was formed in the year 1965. The name of Shivram was entered as a founder member by

his father i.e. Gundu. He submits that, admittedly, Shivram completed his graduation in the year 1966. Hence, it was not possible that Shivram had any independent source of income. He, therefore, submits that it is clear that the suit property, though purchased in the name of Shivram, it was purchased by Gundu. He submitted that the payment towards the share price was also paid by Gundu and the receipt towards payment was also issued in the name of Gundu. He submits that the said receipt was brought on record; however, the same is ignored by both courts.

3. Learned counsel for the appellant further submits that the original ancestor, i.e. Gundu, had executed a Will with respect to the present suit property as well as other property. He submitted that in the Will, the suit property was said to have been kept as common property. He, therefore, submits that the execution of the Will by Gundu and the aforesaid facts would make it clear that the suit property was a joint family property and not an independent property of Shivram. Learned counsel for the appellant thus submits that non-consideration of the aforesaid vital evidence and facts raises a question of law to be decided in this Second Appeal.

4. I have considered the submissions made by the learned counsel for the appellant. I have perused the papers of the Second

Appeal. Both the Courts, after considering the evidence on record, have concurrently held that the plaintiff failed to prove that the suit property was purchased by Gundu and that it was a joint family property. The plaintiff's claim of being in possession of the suit property is not accepted by both the Courts. A perusal of the documents produced on record, as referred to in the judgment of the trial court, does not indicate that the receipt relied upon by the learned counsel for the appellant was produced on record. Even otherwise, the aforesaid submissions would require a re-appreciation of the facts and evidence, which is not permissible under Section 100 of the CPC.

5. The grounds with regard to Shivram's independent source of income or that the property was purchased in the name of Shivram are considered by both Courts after examining the evidence on record. On examining the documentary and the oral evidence on record, the defendant's exclusive title to the suit property is accepted by both Courts. The execution of the Will by Gundu is not accepted by both the Courts to be a genuine Will. I do not see any illegality or perversity in the reasons recorded by both the Courts in not accepting the Will to be a genuine Will. Thus, the argument raised on behalf of the appellant does not raise any substantial question of law to be considered by this Court.

6. Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed. In view of the dismissal of the Second Appeal pending Interim Application No. 8884 of 2024 is dismissed as infructuous.

[GAURI GODSE, J.]