

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 864 OF 2019
WITH
SECOND APPEAL NO. 546 OF 2019**

Shantinath Baburao Ugare ...Appellant

Vs.

Kashibai Baburao Ugare (Deceased ... Respondents
Through Lrs.) Shri Shantinath Baburao
Ugare and Anr.

Mr. Y. V. Divekar a/w Pawan Rajpal i/b M/s Divekar and Co. for the
Appellant in both appeals.

Mr. Ashutosh M. Kulkarni a/w Akshay Kulkarni for Respondent No.2
in both appeals.

CORAM : GAURI GODSE, J.

DATED : 4th DECEMBER 2024

ORDER:

1. Heard learned counsels for the parties.
2. Second Appeal No. 864 of 2019 arises out of dismissal of the appellant's suit for decree of injunction restraining defendant no.2 from obstructing the plaintiff's possession.
3. Second Appeal No. 546 of 2019 arises out of dismissal of the appellant's suit seeking declaration that the trust deed executed by defendant no.1 in favour of defendant no.2 is illegal and not binding

upon the plaintiff.

4. Both the suits are dismissed by the judgments and decrees impugned in the second appeals.

5. Learned counsel for the appellant submits that defendant no.1 was not entitled to transfer the suit property in the name of defendant no.2 trust. He submits that the plaintiff had right in the suit property; hence, the trust deed executed by defendant no.1 would not be binding upon the plaintiff. He submits that there was a Court Commissioner's map on record which clearly indicates that the plaintiff is in possession of the suit property. He submits that both the Courts erroneously accepted defendant no.1's case that she was in possession of the suit property only based on the averments in the trust deed. He therefore submits that the second appeals would require consideration by this Court on the ground of incorrect appreciation of evidence which indicates that appellant has a right in the suit property and he is in possession of the suit property.

6. Learned counsel for respondent no.2 supports the impugned decrees. He submits that the plaintiff was unable to prove his title over the suit property. He submits that both the Courts concurrently accepted the partition deed between the parties through which defendant no.1 had right title interest in the suit property, which is

validly transferred to defendant no.2 by way of a trust deed. He therefore submits that the second appeals do not raise any substantial questions of law in view of the concurrent findings of facts recorded by both the Courts.

7. I have perused the impugned judgments in both the second appeals. Though, the plaintiff has claimed to be in possession on the ground of ownership, he was unable to prove his ownership to the suit property.

8. The registered partition deed between the parties is concurrently accepted as a valid partition deed. Both the Courts have referred to the plaintiff's entitlement pursuant to the partition deed which does not refer to any right in respect of the suit property. The reasons recorded by both the Courts are based on documentary evidence on record supporting defendant no.1's case that the suit property was given to her share pursuant to the partition deed. Admittedly, the partition deed is not challenged by the plaintiff. In view of the current finding of facts recorded, accepting defendant no.1's title to the suit property, the grounds raised on behalf of the appellant would not require any consideration by this Court.

9. The reliance placed on the Commissioner's report to support the appellant's contention of being in possession would also not be

of any assistance to the appellant. The first appellate Court has referred to the contents of the Court Commissioner's report, which records that statement was made on behalf of the tenant in the suit property that the plaintiff had rented out the premises to him which is in his possession. The first appellate Court has thus, rightly disbelieved the Court Commissioner's report to accept plaintiff's possession.

10. In view of the ample evidence on record in the form of partition deed and revenue records to indicate that the suit property was given to the share of Kashibai i.e., defendant no.1 and she was in possession of the suit property prior to the execution of the trust deed, the findings in the impugned judgments cannot be faulted.

11. In the absence of any challenge raised to the partition deed, the grounds raised on behalf of the appellant would not require any consideration by this Court. I do not find any illegality or perversity in the reasons recorded by both the Courts in disbelieving the plaintiff's contentions regarding ownership and possession.

12. The second appeals do not raise any substantial question of law. Hence, the Second Appeals are dismissed.

(GAURI GODSE, J.)