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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 596 OF 2013
WITH
CIVIL APPLICATION NO. 331 OF 2013
IN
SECOND APPEAL NO. 596 OF 2013**

Parvati Maruti Dhane and Ors ... Appellants/Applicants

vs.

Shankar Keru Dhane ... Respondent

**WITH
CIVIL APPLICATION NO. 1055 OF 2018
IN
SECOND APPEAL NO. 596 OF 2013**

Jotiram Pandurang Dhane ... Applicant

vs.

Shankar Keru Dhane ... Respondent

Mr. Akshay Pawar i/b. Mr. Kunal Bhanage for Appellants.

CORAM : GAURI GODSE, J.

DATED : 19th NOVEMBER 2024

ORDER:

SECOND APPEAL NO. 596 OF 2013.

1. This second appeal is preferred by the original defendants to challenge the concurrent judgments and decrees allowing the

respondents' suit for declaration of ownership and injunction.

2. Learned counsel for the appellants submitted that though the sale deed stands in the plaintiff's name, the defendant's predecessor in title, i.e. Baburao, had contributed towards the consideration amount; thus, it was the plaintiff's and Baburao's joint property. He further submits that the plaintiff was only 16 years old at the time of the execution of the sale deed. Hence, it is unbelievable that he had an independent source of income to the extent of payment of the sale consideration amount for purchasing suit property as his self-acquired property.

3. Learned counsel for the appellants further submitted that initially, a mortgage document was executed by the original owner of the suit property in the name of the plaintiff. Thereafter, the suit property was purchased from the original owner by executing the registered sale deed in the name of the plaintiff. However, Baburao also made a contribution. Learned counsel for the appellants submits that both the courts have erroneously accepted the plaintiff's plea that out of his income working as a Mill worker, the plaintiff was able to earn and save amount monthly, which would have been sufficient to purchase the suit property, for Rs. 500/-.

4. Learned counsel for the appellants points out the mutation

entry no. 218, by which the names of the defendants were entered as owners of the suit property. Thus, he submits that both the courts failed to correctly appreciate the mutation entry, which recorded the defendants' names as owners of the suit property. Learned counsel for the appellants submits that the second appeal would, therefore, require consideration on the point of incorrect appreciation of the pleading and evidence on record.

5. I have perused the impugned judgments. The relations between the parties and the execution of the mortgage deed and the sale deed in the exclusive name of the plaintiff are not in dispute.

6. Both courts have considered the defendants' pleadings regarding Baburao's contribution. The initial mortgage deed and the sale deed are in the plaintiff's name. After examining the evidence and pleadings, both courts disbelieved the defendants' case that Baburao had contributed towards payment of part of the consideration amount for the purchase of the suit property.

7. A perusal of the reasons recorded in the impugned judgments indicates that the plaintiff's income from his service as a mill worker and saving monthly amount of Rs. 50/- to Rs.60/- from his own independent income is brought on record in the cross examination

of the plaintiff. By referring to the evidence on record, both the courts have accepted that the plaintiff had sufficient income for the payment of the consideration amount. By referring to the evidence on record, both the courts have disbelieved the defendants' case that Baburao had contributed towards payment of the consideration amount.

8. The mutation entry relied upon by the learned counsel for the appellants is of the year 1980. The first appellate court referred to the entry in the consolidation scheme in the name of the plaintiff. The first appellate court thus held that the subsequent mutation entry of the year 1980 would not confer title in favour of the defendants when the sale deed dated 3rd June 1961, exclusively in the name of the plaintiff, is not in dispute.

9. A perusal of the reasons recorded by both courts indicates that the documentary as well as the oral evidence of the parties was thoroughly examined by both the courts to accept the plaintiff's independent income. The first appellate court also referred to admissions given on behalf of the defendants regarding plaintiff's independent income at the relevant time. Thus, in view of the aforesaid concurrent findings of facts, no fault can be found in the conclusions recorded by both the courts that the plaintiff had his

independent income and had purchased the suit property out of his income. Even otherwise, the defendants' case regarding the contribution made by Baburao was disbelieved for want of any supporting evidence.

10. I do not find any illegality and perversity in the reasons recorded by both courts. The arguments raised on behalf of the appellants would require reexamination of the evidence on record, which is not permissible under Section 100 of the Civil Procedure Code, 1908.

11. In view of the concurrent findings of fact recorded by both courts, the grounds raised on behalf of the appellants would not require any consideration by this court. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

12. The applications for heirs of deceased parties are pending, and there is delay in filing the applications. Since the second appeal has been pending for admission since 2013, I called upon the learned advocate appearing for the appellants and the heirs of the deceased appellant to point out whether the second appeal raises any substantial question of law. Since the second appeal is dismissed for want of any substantial question of law, the pending

interim applications would not survive. Hence, all the pending interim applications are disposed of as infructuous.

(GAURI GODSE, J.)