IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.450 OF 2021
WITH
INTERIM APPLICATION NO.4011 OF 2021
IN
SECOND APPEAL NO.450 OF 2021

WAMAN VITTHAL KULKARNI
(DECD.THR.LRS) SHANTABAI W. KULKARNI
(DELETED) BALKRISHNA W. KULKARNI & ORS ....Appellants/Applicants
V/S
PANDURANG BAPU PATIL ....Respondent

...

Mr. Anand S. Patil for the Appellants/Applicants/Original Defendants.
Mr. Bhooshan R. Mandlik for the Respondent/Original Plaintiff.

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CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 11, 2024.

ORDER:

1 This Appeal is filed challenging the judgment and decree dated 25 August 2021 passed by the District Judge-2, Kolhapur in Regular Civil Appeal No.213 of 2016, by which the First Appellate Court has proceeded to allow the Appeal and has set aside the judgment and decree dated 23 June 2016 passed by the Civil Judge Junior Division, Radhanagari in Regular Civil Suit No.26 of 2006. The First Appellate Court has decreed the suit by directing the Appellants to demolish unauthorized construction of house raised by them in the suit property and handover vacant possession of the suit property to the Plaintiff.

2 Facts of the case as pleaded in the Pliant are that Plaintiff-Pandurang Bapu Patil has purchased the suit property admeasuring 2 R out of the total land admeasuring 5.1 R in Gat No.610 at village Shirse, Taluka Radhanagari, District Kolhapur vide registered sale deed dated 12 February 1993. The land at Gat No. 610 was originally owned by Defendant No.1-Waman Vitthal Kulkarni alongwith his brother Chandrakant Vitthal Kulkarni. That Plaintiff is in service of State Transport Corporation at Kolhapur and purchased the suit property for construction of a house. That when the Plaintiff visited the suit property in first week of May 2006, he noticed that Defendant Nos.2 and 3 had constructed a house on the suit property. The said Defendants informed the Plaintiff that the suit property was already purchased by them. Plaintiff therefore initiated Regular Civil Suit No.26 of 2006 before the Civil Judge Junior Division, Radhanagari seeking mandatory injunction against Defendant Nos.1 to 3 for demolition of the construction carried out at the suit property and for handing over possession thereof. The Trial Court however proceeded to dismiss the suit by its judgment and decree dated 23 June 2016. The Plaintiff filed Regular Civil Appeal No.213 of 2016 before the District Court, Kolhapur. By judgment and order dated 25 August 2021, the Appeal of the Plaintiff has been allowed and the suit has been decreed with direction to the Defendants to demolish construction carried out at the suit property with further direction to hand over possession of the suit property to the Plaintiff. Appellants, who are original Defendants, are aggrieved by the judgment and order, passed by the First Appellate Court and have accordingly filed the present Second Appeal.

3 I have heard Mr. Patil, the learned counsel appearing for the Appellants. He would submit that the present Appeal warrants admission on account of conflicting judgments of the Trial Court and the First Appellate Court. He would submit that the Defendants have purchased the entire area of 5.1 R of Gat No.610 by way of sale deed dated 24 February 1984 and since the sale deed in favour of Appellants is executed at prior point of time, it cannot be stated that Plaintiff acquired any right, title or interest in respect of lesser area admeasuring 2 R in land bearing Gat No.610. That the said sale deed dated 24 February 1984 was executed for consideration of Rs.90/- and that therefore under provisions of section 54 of the Transfer of Property Act, 1882 the same did not require registration. That in pursuance of purchase of land in their favour in the year 1984 the Defendants have constructed house on the suit property in the year 1988 and have been residing therein. That despite prior purchase of land as well as construction of house, the Plaintiff still took the risk of executing a sale deed from erstwhile owners in his favour on 12 February 1993. That after execution of the said sale deed on 12 February 1993, Plaintiff never visited the suit property and as per the admission given in the plaint itself, the first visit was made by him in May 2006. That thus for a long period from 12 February 1993 till May 2006 Plaintiff never objected to possession of the suit property by the Defendants. That the sale deed executed in favour of the Plaintiff is barred under the provisions of section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. That the Defendants have proved that they being paying taxes in respect of the house to the Gram Panchayat since the year 1988.

4 Mr. Patil would further submit that the Trial Court has correctly appreciated the entire evidence on record for arriving at a conclusion that Plaintiff does not have better title in respect of the suit property on the strength of sale deed executed in his favour. That the Trial Court has correctly held that the Plaintiff always had knowledge about construction of house by the Defendants on land at Gat No.610 in the year 1988. That the First Appellate Court has committed an error in reversing the finding of fact recorded by the Trial Court. Mr. Patil would take me through the evidence on record to demonstrate that the Defendants have been possessing the suit property since 1988 and have been paying Gram Panchayat taxes from 1988-89. That in addition to the house, Defendant Nos.2 and 3 constructed Gobar Gas (Bio Gas) plant on the suit property in the year 1989-90 after obtaining government grants. That it has came on evidence that though the Plaintiff is in service of State Transport Corporation, he is permanent resident of Shirse village and that his own house is located at the distance of 200 to 300 feet from the suit property. That Plaintiff was always aware about construction of the house by Defendant Nos.2 and 3 in the year 1988. He would also invite my attention to the Affidavit of evidence of Defendant No.1 Waman Vitthal Kulkarni about the sale deed dated 12 February 1993 who had deposed about gross illegality in the sale deed dated 12 February 1993. Mr. Patil would thus submit that no title is vested in favour of the Plaintiff on the strength of the said sale deed dated 12 February 1993. Therefore, the First Appellate Court has erred in reversing well reasoned order of the Trial Court and in decreeing the baseless suit filed by the Plaintiff.

5 *Per contra*, Mr. Mandlik, the learned Counsel appearing for Respondent/original Plaintiff would oppose the Appeal and support the order passed by the First Appellate Court. He would submit that the alleged document of sale deed dated 24 February 1984 shown to have been executed in favour of Defendant Nos.2 and 3 is a false and fabricated document and that the same is not registered. That consideration for sale is deliberately shown as Rs.90/- with a view to escape from the requirement of section 54 of the Transfer of Property Act, 1882. That the market value of the land, admeasuring 5.1 R could not have been as low as Rs.90/- on 24 February 1984. That the entire theory of construction of house in the year 1988 by Defendant Nos.1 and 2 is fallacious and that what stands that the site is a RCC construction carried out just before filing of the suit by the Plaintiff. That the Lower Appellate Court has correctly appreciated the entire evidence on record and that therefore its order does not warrant interference by this Court.

6 I have considered the submissions canvassed by the learned counsel appearing for the parties. Since there are conflicting judgments passed by the Trial Court dismissing the suit and by the First Appellate Court decreeing the suit, I have extensively heard the learned counsel appearing for the parties and also minutely gone through the pleadings, evidence as well as judgments of the Trial Court and First Appellate Court.

7 Plaintiff’s suit for mandatory injunction is premised on his assertion of title acquired on the strength of registered sale deed dated 12 February 1993 executed in his name. The said claim of ownership raised by the Plaintiff is sought to be demolished by the Defendants by setting up the theory that Defendant Nos.2 and 3 purchased the entire Gat No.610 admeasuring 5.1 R from Defendant No.1-Waman Kulkarni and his brother Chandrakant Kulkarni vide sale deed dated 24 February 1984. The sale deed dated 24 February 1984 is an unregistered document and shown to have been executed for consideration of Rs.90/-. As against this, the sale deed executed in favour of Plaintiff on 12 February 1993 has been registered and consideration shown therein is Rs.6,000/-. The Plaintiff has purchased lesser area of only 2 R out of total area 5.1 R out of Gat No.610. Thus there is a vast difference between the considerations paid by the rival parties for purchase of the land bearing Gat No.610. Defendant Nos.2 and 3 claim to have purchased entire 5.1 R land for paltry consideration of Rs.90/- on 24 February 1984 whereas Plaintiff has paid consideration of Rs.6,000/- for lesser area of 2 R out of the same land. Since claim of ownership is raised by rival parties on the strength of sale deeds executed in their respective favour, it would be necessary to determine as to who actually acquired title in the suit property.

8 Perusal of the judgment of the Trial Court would indicate that no attempt is made by the Trial Court to go into the issue of genuineness of

the sale deed dated 24 February 1984 allegedly executed in favour of Defendant Nos.2 and 3. On the other hand, the First Appellate Court has made a detailed enquiry in that regard and has recorded following findings:

> 17. ... . The defendants have placed much reliance on receipt Exh. 185. As per contention of defendants they have purchased land Gat No. 610 total area 0 H. 05.1 R. for consideration of Rs.90/- only, Thus, the plaintiff is having no title or concern with the suit property and he has no right to challenge the title of defendants No.2 and 3. However, it is pertinent to note that the receipt Exh.185 has not proved by examining any independent witness, attesting witness or executant of this document Exh. 185. Not only this on careful perusal of this receipt Exh.185 it appears that this receipt has been written on simple paper and affixed 2 revenue stamps of 20 ps. on it. This receipt not bears signature of Chandrakant Vitthal Kulkarni. Names of two witnesses have been shown as attesting witnesses, however, signature of both witnesses named in this receipt not appearing on this document. Apparently from this document it reveals that it might have been prepared after thought only to give go bye to the registered sale deed Exh. 68 executed in favour of plaintiff by the defendant No. 1. As D.W.1 Kamlakar in his cross-examination categorically stated at page No. 14 of his cross-examination that in the year 1984 price of suit land was Rs.25/- per Guntha. Not only this but D.W. 2 Balwant Kurne also in his cross at page No. 11 categorically stated that in the year 1993 price of suit land might be Rs.1,00,000/-. The inference which can be drawn from this evidence came in cross-examination of D.W. 1 Kamlakar and D.W. 2 Balwant is that certainly in the year 1984 when alleged receipt Exh. 185 has been executed as on 24.2.1984 price of suit property Gat No. 610 having its area 0 H. 05.1 R. was not less than Rs.100/-. As per provisions of Section 54 of the Transfer of Property Act when the price of immovable property is having market value more than Rs.100/- transfer of such property shall be effected by registered instrument and not by un-registered document. Admittedly the defendant No. 2 and 3 have not got executed the registered sale deed in their favour in respect of Gat No. 610 area 0 H. 05.1 R. from the original owners of this land. Not only this but the alleged receipt Exh. 185 got executed by them from Vitthal Waman Kulkarni and Chandrakant Waman Kulkarni also not acted upon. If really

> they had purchased this Gat No.610 total area 0 H. 05.1 R. for consideration of Rs.90/- as alleged by them they were able to record their name in record of rights. However, no entry of their name is appearing in the 7/12 extract on the basis of alleged receipt Exh. 185. On the contrary the plaintiff has recorded his name in the record of rights on the basis of registered sale deed Exh. 68. Hence, I am of the view that it cannot be said that the defendants have disproved the evidence of the plaintiff in respect of his title to the suit property and also of the view that the defendants No. 2 and 3 have failed to prove that they have acquired the title on the basis of receipt Exh.185 placed on record. ... ...”

9 Thus the First Appellate Court has doubted the genuineness of the alleged sale deed dated 24 February 1984 which is actually in the nature of receipt executed on a plain paper by affixing two revenue stamps of 20 paise on the same. Though Chandrakant Vitthal Kulkarni is shown as seller, the receipt does not bear his signature. It is difficult to believe that the market value of the land admeasuring 5.1 R would be as low as Rs.90/- in the year 1984. Going by the evidence of DW-1 Kamlakar Waman Kulkarni the market value in the year 1984 was Rs.25/- per guntha which means atleast Rs.125/- for area of 5.1 R. Therefore even going by the conservative (and unbelievably low) estimate of Defendants’ witness, the market value of the land was definitely in excess of Rs.100/-. When the consideration allegedly paid by the Defendant Nos.2 and 3 is compared with the consideration of Rs.6,000/- paid by Plaintiff nine years later in 1993 it becomes impossible to believe that the market value of the land was less than Rs.100/- in the year 1984. If value of land admeasuring 5.1 R was Rs. 90 in 1984, the value of area of 2 R would be Rs. 35. It is impossible to believe that in 9 years, the value would escalate

from Rs. 35 to Rs. 6000. In my view therefore the First Appellate Court has rightly held that the document in the form of sale deed/receipt dated 24 February 1984 is created by way of afterthought with a view to escape the provisions of section 54 of the Transfer of Property Act, 1882 so as to defeat Plaintiff's claim of title based on registered sale deed.

10 Another interesting factor in the present case is that the Defendant No.1 Waman Vitthal Kulkarni is a signatory to the sale deed dated 12 February 1993 executed in favour of Plaintiff. However Appellant No. 1/ Defendant No. 1, after selling the land upon acceptance of consideration of Rs.6,000/- from Plaintiff, has shown audacity to join Defendant Nos.2 and 3 in defending the suit by branding the sale transaction of 1993 as illegal. Said Defendant No.1 through his legal heirs continue to prosecute the litigation despite having sold the land to Plaintiff and if the case of Defendant Nos. 2 and 3 is to be believed, even to Defendant Nos.2 and 3. Such a conduct on the part of Defendant No.1 and his legal heirs deserves deprecation.

11 The First Appellate Court has also taken note of the fact that based on the alleged sale transaction of 1984, Defendant Nos.2 and 3 did not get their names mutated to the revenue records. After considering the entire evidence on record, I have no hesitation in holding that Defendant Nos.2 and 3 did not acquire any right, title or interest in respect of the suit property based on the alleged sale deed/receipt executed in their favour on 24 February 1984.

12 The next issue is about possession of the suit property. It is the case of the Defendants that Defendant Nos.2 and 3 constructed a house on the entire land bearing Gat No.610 in the year 1988 and have been residing therein since then. The Trial Court has proceeded to accept the said theory set up by the Defendant Nos.2 and 3 and has gone to the extent of holding that the Plaintiff always had the knowledge of construction of the house in the year 1988. I however I do not find any iota of evidence on record about Plaintiff acquiring knowledge about alleged construction of the house by Defendant Nos.2 and 3 in the suit property in the year 1988. The finding recorded by the Trial Court is thus completely perverse. The First Appellate Court has held that Plaintiff was put in possession of the suit property upon execution of registered sale deed. No concrete evidence is produced on record by the Defendants about date of actual construction of RCC structure at the suit site in 1988. Some stray statements made in the evidence about payment of taxes since 1988-89 would not be sufficient to draw presumption of construction of house at the suit site in the year 1988. In absence of any title, Defendant Nos.2 and 3 have clearly encroached upon the suit property. They have neither claimed nor proved adverse possession for period exceeding 12 years. In my view therefore Defendant Nos.2 and 3 are not entitled to protect their unauthorized possession over the suit property.

13 After considering the entire conspectus of the case, I am of the view that the findings recorded by the First Appellate Court are supported by the evidence on record. There is no perversity in the said findings. The

First Appellate Court has recorded findings of fact, in which this Court is not supposed to interfere. The Trial Court had committed glaring errors while dismissing the Plaintiff's suit, which have rightly been corrected by the First Appellate Court. In my view, therefore, even though there are conflicting judgments, no case is made out by the Appellants for admission of the Appeal. No substantial question of law is involved in the Appeal. I am therefore, not inclined to admit the Appeal.

14 Consequently, the Second Appeal filed by the Appellants is dismissed without any orders as to costs. In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is disposed of accordingly.

15 After the order was pronounced, Mr. Patil, the learned Counsel appearing for Appellants would pray for continuation of *ad-interim* relief granted by this Court on 14 December 2021 for a period of eight weeks. The prayer is opposed by Mr. Mandlik, the learned Counsel appearing for the Respondent. Considering the fact that the *ad-interim* relief is operational since 14 December 2021, the same is continued for a period of eight weeks from today.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM Date: 2024.01.15 15:00:24 +0530