

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13514 OF 2024
WITH
CIVIL APPLICATION NO. 1768 OF 2017
WITH
INTERIM APPLICATION NO. 7334 OF 2024
IN
SECOND APPEAL NO. 728 OF 2023**

Sumant Balkrishna Pilankar ... Applicant/Appellant

vs.

Tukaram Laxman Rane and Ors ... Respondents

Mr. Sushil A. Inamdar i/b. Mr. Salunkhe, for Applicant/Appellant.

Mr. Abhijit Adagule a/w. Mr. Shantanu Patil, for Respondent No.1.

Mr. Omkar Paranjape for Respondent Nos. 6 and 7.

CORAM : GAURI GODSE, J.

DATED : 4th DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit to challenge the sale deed executed in favour of defendant no.1. Learned counsel for the appellant submits that the suit property was a joint family property of

plaintiff and defendant nos. 2 to 5.

2. He submits that defendant no.2 executed the sale deed for himself and as the power of attorney holder of plaintiff and defendant no.3. He, therefore, submits that the plaintiff and defendant nos. 2 and 3 were not competent to sell the entire suit property when defendant nos. 4 and 5 also had a share in the suit property.

3. Learned counsel further submits that the sale deed was under valued then the market value of the suit property. He submits that though the market value of the suit property was Rs. 2,43,000/-, the sale deed was executed only for an amount of Rs. 50,000/-. Learned counsel for the appellant therefore, submits that the second appeal would raise substantial questions of law on the competency of the plaintiff and defendant nos. 2 and 3 to execute the sale deed without the consent of defendant nos. 4 and 5. He submits that under valuation of the sale deed would also raise substantial questions of law to be decided in the second appeal.

4. Learned counsel appearing for respondent no.1 supports the impugned decrees. He submits that though served, defendant nos. 2 to 5 did not file any written statement to support the plaintiff's case. He therefore, submits that the ground raised on the

competency would not be available for the appellant when he has executed a power of attorney in favour of defendant no.2 authorising him to execute the sale deed in respect of the suit property. With regard to the second ground raised by the appellant on under valuation of the suit property, learned counsel for respondent no.1 submits that the plaintiff failed to produce any supporting evidence to indicate that the suit property was under valued for the purpose of sale. He thus, submits that no fault can be found in the reasons recorded by both the courts.

5. I have perused the impugned judgments, copy of plaint, and power of attorney. The plaintiff has challenged the power of attorney executed in favour of defendant no. 2. Based on the power of attorney executed by the plaintiff and defendant no.3, defendant no.2 has executed the sale deed in favour of defendant no.1. The ground raised on the competency of defendant no.2 to execute sale deed on behalf of defendant nos. 4 and 5 is not necessary to be considered at the behest of the appellant. The appellant has already executed the power of attorney in favour of defendant no.2. Hence, the appellant is not entitled to raise the ground of competency of defendant no. 2 to execute the sale deed.

6. With reference to the second ground regarding under

valuation of the suit property, both the courts have disbelieved the plaintiff's contentions for want of any supporting evidence. In view of the concurrent findings recorded by both the courts, the ground of under valuation would require appreciation of facts and evidence on record which is not permissible under Section 100 of the Civil Procedure Code, 1908.

7. Second Appeal does not raise any substantial question of law. The second appeal is dismissed. In view of dismissal of the second appeal, pending applications stand disposed of as infructuous.

(GAURI GODSE, J.)