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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 771 OF 2023
WITH
INTERIM APPLICATION NO. 18468 OF 2023

M. Aslam Imamsab Kalyani ... Appellant

Vs.

Rukmini Arun Shendage and Others ... Respondents

Mr. Anand Kulkarni for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 10th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellant. This second appeal is preferred by defendant no. 10 to challenge the concurrent judgments and decrees in favour of respondent no. 1 declaring respondent no. 1 as owner of the suit property and restraining defendant from obstructing her possession.

2. Learned counsel for the appellant submits that the suit was barred by limitation. He submits that defendant nos. 1 to 6 executed the sale deed in favour of defendant nos. 7 to 8 on 7th September 2006. Defendant nos. 7 to 8 executed the sale deed in favour of defendant nos. 9 and 10 in the year 2011. He submits that since the

sale deed executed by defendant nos. 1 to 6 is of the year 2006, thus, the suit filed in the year 2012 is barred by limitation. He further submits that the description of the suit property pleaded by the plaintiff is incorrect which can be seen from the documents on record. He submits that both the courts have not considered incorrect description of the suit property. He therefore submits that the second appeal would require consideration on the ground of the suit being barred by limitation and both the courts not correctly appreciating the pleadings and evidence with regard to the incorrect description of the suit property.

3. I have considered the submissions made on behalf of the appellant. Perused the impugned judgments. The appellant is original defendant no. 10. Defendant no. 10 though served failed to file any written statement and the suit proceeded without written statement of defendant no. 10. Defendant nos. 9 and 10 claim right in respect of the suit property through defendant nos. 7 and 8, who filed their written statement, however, defendant nos. 7 and 8 claim right through defendant nos. 1 to 6, who did not appear and the suit proceeded ex-parte against defendant nos. 1 to 6.

4. The suit is not filed for challenging the subsequent sale deeds, however the suit is for declaration of plaintiff's title based on

the registered document dated 13th January 2006 executed by defendant nos. 1 to 6 in her favour and for injunction. There is no dispute or challenge with respect to the sale deed in favour of the plaintiff.

5. In view of the prayer regarding declaration and injunction, the subsequent sale deed of the year 2006 executed in favour of defendant nos. 7 and 8 cannot be considered as the relevant date for calculation of the period of limitation. In view of the undisputed sale deed in favour of plaintiff, defendant nos. 1 to 6 had no right to execute subsequent sale deed in favour of defendant nos. 7 and 8. Based on the lawful possession of the plaintiff pursuant to the valid sale deed in her favour, the plaintiff sought injunction to protect her possession, by seeking declaration of her title. The plaintiff pleaded cause of action in view of obstruction to her possession. Based on the pleadings regarding cause of action both the courts have accepted that the suit is within limitation. There is no written statement filed by the appellant raising any objection on the cause of action as pleaded by the plaintiff.

6. Both the courts have recorded concurrent findings on the cause of action pleaded by the plaintiff and the obstruction raised by the defendants to her possession. I do not find any illegality or

perversity in the reasons recorded by both courts on the point of limitation.

7. So far as the ground raised on the incorrect boundaries is concerned, in the absence of any written statement by the appellant raising any dispute on the description of the suit property, the ground argued in the second appeal is not necessary to be examined on behalf of the appellant.

8. Both the courts have considered the pleadings and evidence on record exhaustively. Defendant no. 10 has not cross examined the plaintiff on the evidence led by her in support of the prayer for declaration and injunction. Hence, the second ground raised on behalf of the appellant would not require any consideration by this court.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

10. In view of the dismissal of the second appeal, interim application is disposed of as infructuous.

[GAURI GODSE, J.]