

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 61 OF 2020

WITH

INTERIM APPLICATION NO. 281 OF 2023

Shri. Baban @ Vijaykumar

Ganpatrao Patil

....Appellant

(Orig.Defd. No.1)

V/s.

Mahadeo Dhondiram Patil

(Deceased thr. LRS.) and Ors.

....Respondents

(No.1-Orig.Plff,

No.2-Orig.Defd No.2)

Mr. Pratap Patil, for the Appellant.

Mr. Ashutosh M. Kulkarni a/w. *Mr. Akshay Kulkarni, for
Respondent Nos.1A to 1D.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 February 2024.

P.C. :

1. By this Appeal, the Appellant challenges the Judgment and Decree dated 11 April 2018 passed by the District Court, Sangli in Regular Civil Appeal No. 105 of 2009 thereby confirming the Decree

dated 5 March 2009 passed by the Civil Judge Junior Division, Palus in Regular Civil Suit No. 143 of 2008.

2. Plaintiff instituted Regular Civil Suit No. 143 of 2008 seeking a declaration that the suit land admeasuring 4 Ares is in his possession and seeking injunction against the Defendant from obstructing his possession over the suit property. Plaintiff also sought consequential declaration of ownership in respect of the suit property. It appears that by virtue of registered partition deed executed on 4 June 1965, half portion of the land bearing City Survey No. 458/A admeasuring 49 Ares came to the share of the Plaintiff. After such partition, Plaintiff's father executed Agreement for Sale in favour of Defendant's father on 4 September 1974 agreeing to sell the suit property admeasuring 4 Ares to Defendant's father. It is admitted position that the said Agreement for Sale has not culminated into a Sale-Deed. It is Defendant's case that in addition to the Agreement for Sale, a separate agreement was executed on the same day i.e. on 4 September 1974 by which Defendant's father was put in possession of the suit property by Plaintiff's father. On the strength of the said Agreement dated 4 September 1974, the Defendant claims possession over the suit property. On the contrary, it is Plaintiff's case that his father did not have any authority to execute Agreement for Sale or the possession receipt dated 4 September 1974 in favour of Defendant's father. The Trial Court has proceeded to decree Plaintiff's suit on 5 March 2009 holding that the Plaintiff continued to remain owner of the suit property. A finding of fact of possession of the suit property by the

Plaintiff is also recorded by the Trial Court. The first Appellate Court has dismissed Defendant's Appeal by Judgment and Order dated 11 April 2018.

3. Mr. Patil, the learned counsel appearing for the Appellant would submit that the Plaintiff admitted execution of the possession receipt dated 4 September 1974. He would also invite my attention to the deposition of Plaintiff's witness in cross-examination wherein he admitted that the suit property was being used by the Defendants as a courtyard in front of the house. It is Mr. Patil's contention that in view of proof of possession receipt coupled with the deposition of Plaintiff's witness, the Trial and the first Appellate Court ought to have upheld Defendant's claim of possession. He would submit that even if the Defendants have not acquired title in respect of the suit property, their possession thereof has undoubtedly been proved. He would therefore criticize the Trial and the first Appellate Court for granting the relief of injunction in favour of the Plaintiff.

4. In my view, Plaintiff's father did not have any authority to execute the Agreement for Sale in respect of the suit property in favour of the Defendant's father as he lost title and possession of the entire property after execution of the registered partition deed dated 4 June 1965. Mr. Patil fairly admits this position that Plaintiff's father could not have transferred title in respect of the suit property in favour of Defendant's father. In that view of the matter, the next question is whether the Plaintiff's father who had no title could have created

possessory right in favour of the Defendant's father ? The answer to this question is obviously in the negative. Plaintiff's father did not have any authority to execute possession receipt of the suit property in favour of Defendant's father. Therefore, even if the execution of the possession receipt is admitted, in absence of any authority to deliver possession by Plaintiff's father, the said receipt would not create any right of possession by the Defendants. So far as deposition of Plaintiff's witness, Mr. Dilip Balkrishna Nikam is concerned, he has merely admitted that Defendants used the suit property as courtyard. It has come in evidence that Defendants have not constructed anything on the suit property. Therefore, even if it is assumed for the sake of arguments that Defendants or their family members entered upon the suit property and used the same as courtyard in front of their house, the same would not imply exclusive possession thereof by the Defendants.

5. In my view, the Trial and the first Appellate Court have correctly appreciated the evidence on record for the purpose of holding that the Defendants have not acquired either title or possessory rights in respect of the suit property. No serious error can be traced in the view taken by the Trial and the first Appellate Court. No substantial question of law is involved in the Appeal. The Appeal is accordingly **rejected**. Interim Application taken out therein stands disposed of.

SANDEEP V. MARNE, J.