

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

SECOND APPEAL NO.151 OF 2022

WITH

INTERIM APPLICATION NO.1126 OF 2022

IN

SECOND APPEAL NO.151 OF 2022

Balkrishna Dnyanu Gaikwad

since deceased through legal heirs & Ors.Appellants/Applicants

V/S

Babu Dnyanu Gaikwad

since deceased through legal heirs & Ors.Respondents

***Mr. Kuldeep U. Nikam* for the Appellants/Applicants.**

***Mr. Mandar V. Limaye* for the Respondents.**

CORAM: SANDEEP V. MARNE, J.

DATE : MARCH 1, 2024.

P.C.:

1 By this Appeal the Appellants challenge judgment and order dated 18 December 2021 passed by District Judge-1, Sangli in Regular Civil Appeal No.64 of 2014. The Appeal filed by the Appellants has been

allowed by the First Appellate Court to the limited extent of modifying the shares decided by the Trial Court in its decree dated 11 February 2014 passed in Regular Civil Suit No.83 of 2012 (old Regular Civil Suit No.240 of 1989).

2 The limited grievance that the Appellants agitate in the present Appeal is about non-grant of relief of preemption in respect of sale of some portion of the suit property by Defendant No.1 in favour of Defendant No.4. Plaintiff instituted Regular Civil Suit No.240 of 1989 for partition as well as for enforcement of his right of preemption. As on the date of institution of the suit, there was no real cause of action to seek the prayer of preemption as Defendant No.1 had not sold his portion of the land to any person. The suit was apparently decreed *ex-parte* on 10 October 1991 and shares of the parties were determined. It appears that Defendant No.1 proceeded to sell the share allotted to him in favour of Defendant No.4 by executing two sale deeds dated 4 May 1995. Later Defendant No.1 applied for setting aside the *ex-parte* decree. Though his Application was rejected, the Appellate Court allowed the Appeal and directed restoration of the suit. It appears that some time was taken for the actual restoration of the suit which proceedings in which commenced in the year 2006. Defendant No.4 appeared in the suit in the year 2006 and informed the Plaintiff about

the sale transaction vide sale deeds dated 4 May 1995. Even after acquisition of knowledge of execution of sale deeds dated 4 May 1995, Plaintiff failed to amend the plaint so as to include a challenge to the sale deeds dated 4 May 1995. The amendment was apparently moved and granted on 1 September 2010.

3 Under Article 97 of the Limitation Act the period of limitation for filing a suit for preemption is one year and the period of limitation is to be counted from the date possession is taken over by the purchaser and in the event of non-grant of possession to the purchaser from the date of the purchase. In the present case apparently possession was not granted in favour of Defendant No.4 and therefore the date of purchase i.e. 4 May 1995 became the starting point of limitation. Even if it is assumed that plaintiff acquired knowledge about execution of the sale deeds in the year 2006, the amendment ought to have been moved immediately thereafter. Thus qua Defendant No.4 the institution of suit to question the sale deeds executed in his favour got instituted on 1 September 2010. The suit for seeking a declaration for sale deed dated 4 May 1995 was thus clearly barred by limitation. Both Trial as well as the First Appellate Court have rightly rejected Plaintiff's prayer for setting aside the sale deeds dated 4 May 1995. No patent error can be traced in the orders passed by the Trial Court and the First Appellate Court. No

substantial question of law is involved in the present Appeal, the Second Appeal is accordingly rejected.

4 In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)

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