IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 93 OF 2024
WITH
INTERIM APPLICATION NO. 1446 OF 2024
AND
SECOND APPEAL (ST) NO. 4517 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 4519 OF 2024

Mr. Pravin Ganpat Satpute .. Appellant
vs.
Mr. Nivrutti Ranoji Satpute .. Respondent

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Mr. Surel Shah a/w Mr. Hemant Ghadigaonkar for the Appellant in both Appeals.

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CORAM : SANDEEP V. MARNE J.
DATE : 13 FEBRUARY 2024.

P.C.:-

1) These Appeals arise out of two separate judgments delivered by District Court, Pune in Regular Civil Appeal Nos. 354 of 2019 and 355 of 2019. The District Court has dismissed the Appeals filed by Appellant and has confirmed the decrees passed by 22nd Joint Civil Judge, Senior Division, Pune in Special Civil Suit Nos. 103 of 2015 and 811 of 2015.

2) Special Civil Suit No. 103 of 2015 was instituted by the Respondent seeking a declaration that the suit property bearing Survey No. 7/5 admeasuring 1 Are together with super structure consisting of four rooms, W.C. and bathroom is owned by him and seeking Appellant's ejection from the suit property as well as for damages. On the other hand, Appellant filed Special Civil Suit No. 811 of 2015 against Respondent seeking injunction from creation of third-party rights and developing or obstructing Appellant's possession over suit property. The Appellant's suit was premised on assertion that the suit property was self-acquired property of his father. The Trial Court proceeded to decree Respondent's Special Civil Suit No. 103 of 2015 on 30 April 2019 directing Appellant to handover possession of suit property to the Respondent and not to create any third-party rights therein. The Trial Court also directed Appellant to pay damages of Rs.12,000/- to Respondent with liberty to the Respondent to file Application for mense profits under Order 20, Rule 12 of the Code of Civil Procedure. On the other hand, Appellant's Special Civil Suit No. 811 of 2015 came to be dismissed vide decree dated 30 April 2019.

3) Aggrieved by the decrees passed by the Trial Court on 30 April 2019, Appellant filed Regular Civil Appeal No. 355 of 2019 challenging the decree in Special Civil Suit No. 103 of 2015. Regular Civil Appeal No. 354 of 2019 was filed challenging the decree in Special Civil Suit No. 811 of 2015. By two separate judgments delivered on 7 October 2023, the First Appellate Court has proceeded to dismiss both the Appeals filed by Appellant. The Appellant has accordingly filed the present Second Appeals.

4) I have heard Mr. Surel Shah the learned counsel appearing for the Appellant in both the Appeals. He would draw my attention to the sale deed dated 22 August 1979 by which Respondent purchased the suit

property as "Karta" of joint family. He would submit that when the sale deed itself specified that the purchase by the Respondent in its capacity of joint family manager, the nature of suit property being joint family property was clearly established. That this aspect is completely ignored by Trial Court and the first Appellate Court while holding that the suit property was self-acquired property of Respondent. That the purchase of the suit property by Respondent was from income of the joint family as the consideration was paid out of income generated by sale of property of joint family. That the Appellant and his father incurred expenses for construction of three rooms, which are in possession of the Appellant. He would therefore submit that substantial questions of law are involved in both the Appeals warranting their admission as well as setting aside the Orders passed by the Trial Court and the First Appellate Court.

5) After considering the submissions canvased by Mr. Shah, it is seen that Respondent's suit bearing Special Civil Suit No. 103 of 2015 was premised on Sale Deed dated 22 August 1979. The Respondent averred in the plaint that he was employed on the post of Clerk in the Maharashtra Education Society Sevak Credit Co-op. Society on the strength of Bachelor Degree possessed by him and that he purchased the suit property out of his own funds and savings. That after purchase of the suit property, Respondent allowed Appellant's father Ganpat Ranoji Satpute to permit his children (Appellant and his brother-Sunil) to stay along with the Respondent in the suit property since 1987-1988. This is how the Respondent claim permissive possession granted to the Appellant in the suit property. Thus the occupation by the Appellant of the suit premises was described as gratuitous licensee by the Respondent in Special Civil Suit No. 103 of 2015. On the other hand, Appellant filed written statement in Special Civil Suit No. 103 of 2015 contending that though the sale deed was executed in the sole name of Respondent, the Appellant had share in the same. Thus in the written

statement Appellant admitted that the suit property was purchased by the Respondent in his individual name. This stand is continued by the Appellant throughout the trial as well as in the Appeal before first Appellate Court. For the first time the Appellant has attempted to alter the stand by relying on sale deed dated 22 August 1979 contending that the same was executed in the name of Respondent-Nivrutti Ranoji Satpute as manager of joint family. This defence was not taken either in the written statement or in the Appeal memo filed before the first Appellate Court. Therefore, it is too late in a day for the Appellant to now contend that the suit property was purchased by Respondent as Manager of joint family.

6) Appellant's reliance on description of Respondent- Nivrutti Satpute as manager of joint family in the sale deed dated 22 August 1979 at this belated stage of Second Appeal cannot be accepted in view of specific stand taken by him during the course of trial that the Respondent deliberately got the sale deed executed in is individual name with ulterior objective of denying its share to the Appellant. Appellant never averred or deposed during the course of trial that the Respondent- Nivrutti Satpute was the "Karta" of joint family. In his plaint in Regular Civil Suit No. 811 of 2015, the Appellant averred that his father looked after his brothers including the Respondent and secured a job for the Respondent in Maharashtra Education Society on the post of Clerk. That the entire expenditure of education of Respondent was borne by Appellant's father and other brothers. That the Respondent was always dependent on the income of Appellant's father as well as income of other brothers. These averments in the plaint seem to suggest that Appellant's father Ganpat Satpute was the "Karta" of joint family and that the Respondent – Nivrutti Ranoji Satpute was always dependent on Appellant's father. Therefore, the Appellant cannot now be permitted to take a *volte face* and contend that Respondent – Nivrutti Satpute was "Karta" of joint family or that he purchased the suit

property in his capacity as "Karta" of the joint family.

7) Perusal of the findings recorded by the Trial Court and the first Appellate Court on the issue of ownership of the suit property would indicate that the no evidence could be led by the Appellant to prove that the suit property was purchased out of nucleus of joint family income. It is proved in the evidence that Respondent had independent income out of service and was financially capable of purchasing the suit property. It has also come in evidence that the joint family agricultural land at village Valane was not creating sufficient income for purchase of the suit property. Mere independent income of Appellant's father Ganpat Ranoji Satpute was not sufficient to prove that the property became joint family property. Since the properties purchased in the name of Defendant, the burden of proving the same to be joint family property was heavy on the Appellant, which burden in my view has not been discharged by the Appellant. The Apex Court in its judgment in ***D.S. Lakshmaiah & Anr. vs L. Balasubramanyam & Anr.*** has held that the party asserting acquisition of property through joint family income must discharge the burden of proving that the purchase was made through nucleus of joint family income. In the present case such burden is not discharged by Appellant.

8) After considering the overall conspectus of the case, I am of the view that no serious error can be traced in the concurrent findings of fact recorded by the Trial Court and the First Appellate Court. No substantial question of law is involved in both the Appeals. The Appeals are accordingly rejected.

9) After the Order was pronounced, Mr. Shah would submit that the executing Court has stayed the possession warrant till 16 February 2024 vide Order dated 11 January 2024. He would pray for continuation the said

protection for a period of 8 weeks in order to enable the Appellant to test the Order before the Supreme Court. Considering the fact that the Appellant is not possession of the suit property for substantial period of time, the protection granted by the executing Court by Order dated 11 January 2024 shall continue to operate for a period of eight weeks.

[SANDEEP V. MARNE J.]