

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 7 OF 2023****WITH****INTERIM APPLICATION NO. 1879 OF 2020****Ikbal Hamid Kotwadekar & Others****...Appellants / Applicants****Versus****Hasanminya Abdullah Kotwadekar & Others****...Respondents**

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Mr. Onkar Virendra Warange, for Appellants / Applicants.**Mr. Sanjiv Sawant**, a/w. Mr. Abhishek Matkar, Mr. Malhar Bageshwar for Respondent Nos.2 to 10, 12 to 23, 25 and 27.

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CORAM : SANDEEP V. MARNE, J.**DATED : 17 JANUARY 2024.****P.C. :**

The challenge in the present Appeal is to the Judgment and Order dated 21 October 2017 passed by the District Judge, Ratnagiri dismissing Civil Appeal No.51 of 2015 filed by the Appellants and confirming decree dated 22 June 2015 passed by the 2nd Jt. Civil Judge Senior Division, Ratnagiri.

2. Plaintiffs instituted Regular Civil Suit No.110 of 2009 for recovery of possession, injunction and mesne profit. The Trial Court proceeded to decree the suit by holding that Plaintiffs proved ownership over the suit properties and that the Defendant Nos.1 to 7 and 12 to 15 failed to

prove that they are co-sharers in the suit properties. Appellants' Appeal against decree has been dismissed by the District Court and accordingly Appellants have preferred present Second Appeal.

3. I have heard Mr. Warange, the learned counsel appearing for Appellant and Mr. Sawant, the learned counsel appearing for Respondent Nos.2 to 10.

4. After having considered submissions canvassed by the learned counsel appearing for parties, it is seen that the suit properties were purchased by Aayeshabai Abdulla Kotwadekar (Plaintiffs' mother) by way of sale deed dated 26 Jun 1958. On account of the fact that the suit properties are purchased by Aayeshabai exclusively in her name, the Appellants who claim through Abdulla's brother Issak cannot claim any right, title or interest in the suit properties. It is an admitted position that the sale-deed executed solely in the name of Aayeshabai Abdulla Kotwadekar on 26 June 1958 was not challenged by the other brothers Abbas or Issak in any manner.

5. Mr. Warange would contend that prior to execution of the sale-deed in favour of Aayeshabai on 26 June 1958, the Appellants / or their predecessors were occupying house property bearing No.402. He would further submit that the purchase of suit properties in the name of Aayeshabai was meant for entire family and not exclusively for her. He would take me through various events that took place prior to 26 June 1958. According to him, the suit properties were initially in the ownership of the father of Abdulla, Abbas and Issak i. e. late Ali Kotwadekar. That the suit properties were mortgaged from time to time by Abbas. That the Panch Yadi executed on 29 August 1964 would indicate that the suit properties are joint family

properties of Abdulla, Abbas and Issak. Abdulla erroneously claimed exclusive right in the suit properties on account of redemption of mortgage by him by paying an amount of Rs.2,100/- on account of alleged failure on the part of Abbas and Issak to bear their share of Rs.700/- each for redemption of said mortgage. He would submit that mere repayment of entire amount of loan by Abdulla did not make him exclusive owner of the suit property. That therefore even if Abdulla subsequently purchased the suit property in the name of his wife Aaheshabai, she does not become exclusive owner of the suit properties. The Panch Yadi dated 29 August 1964 is also sought to be relied upon to prove that the Appellants possessed suit properties prior to execution of the sale deed dated 26 June 1958 in favour of Aayeshabai.

6. I am unable to agree with the contention of Mr. Warange that Panch Yadi dated 29 August 1964 proves possession of suit properties by Appellant. In fact the Panch Yadi proves that Issak refused to pay his share of Rs.700/- for redemption of mortgage and left the house. Thus, Panch Yadi in fact proves that Issak had left the house. Plaintiffs have come up with a specific case that after purchase of the suit properties by Aayeshabai on 26 June 1958, she permitted Issak to occupy some portion of house property No.409 as a gratuitous licensee. It is therefore difficult to believe that Issak was occupying the house properties prior to purchase by Aayeshabai on 26 June 1958.

7. In my view, Appellants have miserably failed to prove any title in respect of the suit properties before the Trial Court. They are proved to be mere gratuitous licensees without giving any title therein. Appellants /

Defendants did not take any defence of acquisition of title by adverse possession. In that view of the matter, no serious error can be traced in the orders passed by the Trial Court and the First Appellate Court directing possession of the suit properties to be given in favour of the Plaintiffs. No substantial question of law is involved in the present Appeal. Second Appeal is accordingly rejected. Since the Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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