

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.473 OF 2023
WITH
INTERIM APPLICATION NO.18210 OF 2023
IN
SECOND APPEAL NO.473 OF 2023

...
Rangubai Ramchandra Shelar & Ors.Appellants/Applicants

V/S

Sitabai Sadashiv Hagawane & Ors.Respondents

...
Mr. Sandeep Pathak for the Appellants/Applicants.
...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 3, 2024.

P.C.:

1 By this Appeal the Appellants challenge judgment and decree dated 16 February 2023 passed by the District Judge-13, Pune in Regular Civil Appeal No.613 of 2017 by which the District Court has reversed the judgment and decree dated 23 August 2017 passed by the 13th Joint Civil Judge Junior Division, Pune in Regular Civil Suit No.274 of 2017 by rejecting the Plaint under the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908 (**the Code**).

2 I have heard Mr. Pathak, the learned Counsel appearing for the Appellants. He would submit that the District Court has erred in reversing the well reasoned order passed by the Trial Court. That the Plaintiff has no *prima facie* case in view of provisions of section 14 of the

Hindu Succession Act, 1956 (**the Act**) which has correctly been appreciated by the Trial Court. That the very objective behind enacting provisions of Order VII, Rule 11 of the Code is to nip the baseless suits in their bud. That the Trial Court has rightly exercised jurisdiction under Order VII, Rule 11 of the Code for throwing out completely baseless suit filed by the Plaintiffs. That the Trial Court has correctly appreciated the position that the property possessed by a Female Hindu is held by her as a full owner under section 14 of the Act and not as a coparcener. That the Defendant No.1 was the absolute owner of the suit property and that therefore Plaintiffs have no right to claim any share on the basis of they being heirs of Defendant No.1. That there was no point in taking the suit for trial which is clearly meritless in view of provisions of section 14 of the Act.

3 Mr. Pathak would further submit that the suit was clearly under valued in that the Plaintiffs had challenged gift deed and development agreement without correctly valuing the suit as per market value of the property and paying the appropriate stamp duty. That Trial Court has correctly rejected the Plaint under provisions of Order VII Rule 11 of the Code. That the Appellate Court has erroneously reversed the order of the Trial Court on the basis of reasons recorded in just one paragraph (paragraph 14 of its order).

4 I have gone through the orders passed by the Trial Court and First Appellate Court. Perusal of the order passed by the Trial Court would

indicate that the Trial Court has virtually ventured into the merits of the controversy by arriving at a conclusion that the Defendant No.1 is the absolute owner of the suit property under provisions of section 14 of the Act and that the Plaintiffs do not have any share therein. This finding touches upon the merits of the controversy. The Civil Court is not supposed to enter into merits of the controversy while deciding the Plaint under Order VII Rule 11 of the Code. It is not the case of the Appellant that the suit filed by the Plaintiffs is barred under any specific provision of law. It is also not the case of the Appellants that there was no cause of action for the Plaintiffs to file the suit. In that view of the matter, it was not open for the Trial Court to enter into the merits of the controversy for the purpose of determining whether the Plaint can be rejected under provisions of Order VII Rule 11 of the Code.

5 So far as the valuation of the suit is concerned, the Lower Appellate Court has held that the Plaintiffs are not executors of the gift deed and/or the development agreement. That they are seeking a declaration that the gift deed and development agreement are not binding on them. The First Appellate Court has rightly appreciated the difference between security relief of annulment of deed by executant and seeking declaration that the deed is not binding by a non-executant. In that view of the matter, it was not necessary for the Plaintiffs value the suit as per the market value of the suit property.

6 In my view therefore, the Lower Appellate Court has rightly reversed the erroneous order passed by the Trial Court. No substantial question of law is involved in the present Appeal. Second Appeal, being devoid of merits, is dismissed without any orders as to costs.

7 Needless to clarify that the Trial Court shall not be influenced by any of the observations made by this Court while deciding the suit on its own merits.

8 In view of the disposal of the Second Appeal, the Interim Application does not survive and the same is also disposed of.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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