

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

**SECOND APPEAL NO.307 OF 2021
WITH
INTERIM APPLICATION NO.3441 OF 2021
IN
SECOND APPEAL NO.307 OF 2021
WITH
INTERIM APPLICATION NO.2716 OF 2021
IN
SECOND APPEAL NO.307 OF 2021**

Jayshree Bhagwant Sandbhor
V/S

....Appellant

Prabhakar Krushnaji Kokane & Ors.

....Respondents

**WITH
INTERIM APPLICATION NO.10368 OF 2022
IN
SECOND APPEAL NO.307 OF 2021**

Prabhakar Krushnaji Kokane

....Applicant

IN THE MATTER BETWEEN

Jayshree Bhagwant Sandbhor
V/S

....Appellant

Prabhakar Krushnaji Kokane & Ors.

....Respondents

Mr. Tejas D. Deshmukh a/w Ms. S.S. Mohanty *for the Appellant/Applicant.*
Mr. Nitin Gaware-Patil a/w Mr. Mohan Babu Gawade *for Respondent*
No.1/Applicant.

CORAM: SANDEEP V. MARNE, J.
DATE : 20 MARCH 2024.

P.C.:

1 By this Appeal, the Appellant challenges concurrent findings of the Trial and the First Appellate Court in Suit (Counter-Claim) filed by Respondent No.1 for injunction simplicitor. The Trial Court decreed the Counter-Claim filed by Respondent No.1 on 18 September 2009 and has enjoined the Appellant as well as Respondent Nos.2 and 3 from interfering with possession of the suit property.

2 It appears that initially the Appellant filed Regular Civil Suit No.163 of 2002 for specific performance of the agreement for sale dated 4 November 2000 executed by Shantarao Pandurang Kulkarni in her favour. It appears that such Shantarao Pandurang Kulkarni sold north-east portion of the land admeasuring 80 R in favour of Respondent No.1-Prabhakar Krushnaji Kekane. On the strength of the said sale deed, said Prabhakar Krishnaji Kekane filed a Counter-Claim seeking injunction against the original Plaintiff/Appellant from interfering his possession of the purchased land. Later the suit was compromised between the Appellant and original vendor- Shantarao Pandurang Kulkarni who executed a sale deed in Appellant's favour on 10 March 2003 and this is why the suit was withdrawn by the Plaintiff. Respondent No.1 however continued prosecuting the Counter-Claim in respect of his relief for injunction. The Trial Court proceeded to allow the

Counter-Claim by decree dated 18 September 2009 which is confirmed by the First Appellate Court.

3 I have heard Mr. Deshmukh, the learned counsel appearing for the Appellant and Mr. Gaware, the learned counsel appearing for the Respondent No.1.

4 It is Mr. Deshmukh's contention that the sale deed executed in favour of Respondent No.1 on 25 June 2001 is void as the permission granted to Shantanu Pandurang Kulkarni for sale of land in favour of Respondent No.1 was cancelled on 6 September 2001. Mr. Deshmukh would submit that in absence of sale permission, the very transaction of sale in favour of Respondent No.1 is void and since Respondent No.1 does not have valid title to the land, the Trial Court ought to have rejected the claim for injunction. He would further submit that the First Appellate Court's finding about issuance of permission for sale of land to Respondent No.1 suffers from the vice of perversity.

5 I have considered the submissions canvassed by Mr. Deshmukh. If the Appellant believes the sale deed executed by the original vendor in favour of Respondent No.1 is void due to lack of sale permission, it is for the Appellant to take necessary steps to challenge the sale deed dated 25 June 2001. Before the Trial Court, while deciding the Counter-Claim, there was no contest to

the sale deed dated 25 June 2001. The Counter-Claim of Respondent No.1 was for injunction simplicitor. He claims possession of the suit property by relying on sale deed dated 25 June 2001. The remit of enquiry in a suit for injunction simplicitor into title of Plaintiff (Counter-Claimant) was limited. Once the Counter-Claimant produced a sale deed in his name and in absence of any challenge to that sale deed, the only enquiry that the Trial Court was required to conduct was about the aspect of possession. In my view therefore the Trial Court has rightly granted injunction in favour of Respondent No.1.

6 So far as perversity in the finding of the First Appellate Court is concerned, the finding recorded by it in paragraph 19 of the judgment is not to justify or validate the permission dated 20 June 2001 granted in favour of Respondent No.1. The reference to permission order dated 20 June 2001 is made by the First Appellate Court essentially to indicate the location of land in respect of which the permission was granted. Therefore no perversity can be traced in the said finding of the First Appellate Court.

7 In my view it is for the Appellant to take necessary steps, if she believes the sale deed dated 25 June 2001 executed in favour of Respondent No.1 is void due to absence of sale permission. She cannot proceed on a presumption that the sale deed has automatically become void without seeking a declaration to that effect. It must also be observed that the Appellant took a calculated chance of purchasing the property which was already sold to Respondent No.1 without first getting a declaration about sale deed dated 25

June 2001 being void. In absence of any challenge to the sale deed dated 25 June 2001 the injunction granted in favour of Respondent No.1 need not be disturbed.

8 No substantial question of law is involved in the Appeal, the Second Appeal is rejected. However, rejection of Second Appeal shall not come in the way of the Appellant prosecuting her remedies in respect of challenge to the sale deed dated 25 June 2001 and consequential prayers in that regard.

9 With rejection of Second Appeal, Interim Applications taken out by the Applicants do not survive. The same are also accordingly disposed of.

10 After the judgment is pronounced, Mr. Deshmukh would request for continuation of ad-interim relief granted by this Court on 11 July 2022. It appears that the ad-interim relief is only in respect of effecting of mutation entry. It is well settled position that mere revenue records are not determinative of title of parties to the land in question. In that view of the matter, ad-interim relief granted by this Court need not be continued any further. The prayer is accordingly rejected.

(SANDEEP V. MARNE, J.)

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