



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.53 OF 2018
WITH
CIVIL APPLICATION NO.127 OF 2018
IN
SECOND APPEAL NO.53 OF 2018

Rukmini Savla Chougule

... Appellant

Versus

Mahadeo Baburao Shinde (since deceased)

through LRs. Bhimrao Mahadeo Shinde & Ors. ... Respondents.

Mr. Surel S. Shah, for the Appellant.

Mr. M.L. Patil, for Respondent Nos.1A to 1F, 2, 3A, 4 and 5.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 13, 2024

P. C.:

1. Being dissatisfied by the judgment dated 11th October, 2017 passed by the Appellate Court in Regular Civil Appeal No.22 of 2008 dismissing the Appeal thereby confirming the judgment dated 9th April, 2008 passed in Regular Civil Suit No 3 of 2001, the original-plaintiff is before this Court. For sake of convenience, the parties are referred to by their status before the Trial Court.

2. Before advertng to the proceedings leading to the filing

of the present Appeal, it will be necessary to briefly refer to the earlier suit i.e. RCS No.30 of 1992 litigation instituted by the deceased Defendant No.1. RCS No.30 of 1992 was filed by the deceased Defendant No.1 seeking direction to the Plaintiff to executed the Reconveyance Agreement after accepting the sum of Rs 9,000/-. The case of the Defendant No.1 was that the suit property described in paragraph 1B of the plaint was the ancestral property of the Defendant No.1 and was sold to the husband of the Plaintiff for sum of Rs.6,000/- on 15th June, 1979 with condition of repurchase on payment of Rs.9,000/-. It was contended that after death of the husband of the Plaintiff on 6th September, 1989, the property has devolved upon the Plaintiff and the Plaintiff is trying to create third party rights in the suit property. The suit proceeded ex-parte against the Plaintiff and was decreed by the Trial Court vide judgment dated 22nd February, 1998.

3. In the year 2001, Regular Civil Suit No.3 of 2001 was filed by the Plaintiff seeking declaration that the judgment and decree passed in Regular Civil Suit No.30 of 1992 dated 22nd February, 1998 is null and void and for an order of permanent

injunction restraining the defendant from obstructing the lawful possession of the plaintiff in land Gat No.91 to the extent of 40 R land. The case pleaded by the Plaintiff was that the husband of the plaintiff had purchased the suit property by way of registered sale deed dated 15th June, 1979 from the Defendant. After the death of the Plaintiff's husband on 6th September, 1989, the plaintiff's name was mutated in the revenue records vide mutation entry No.210. It was pleaded that fraud was committed by the defendant while filing Regular Civil Suit No.30 of 1992 by giving wrong address of the Plaintiff. The case of the plaintiff was that she was residing at Savatgaon and Bijawadi villages and suit summons was sent on incorrect address of the plaintiff and an *exparte* decree came to be passed against her.

4. It was pleaded that on 25th December, 2000, when the Defendant threatened to take possession of the suit land, inquiries were made by the Plaintiff which revealed the ex-parte decree obtained by the Defendant. It was pleaded that the Plaintiff's husband had not agreed to re-sale the suit land to the Defendant.

5. The suit came to be resisted by the defendant. After

contending about the deed of re-purchase dated 20th December, 1980, it was contended that the Plaintiff was served by affixing of the suit summons on the Plaintiff's residence by the bailiff as well as by substituted service.

6. The parties went to trial. The trial Court upon consideration of the documentary as well as the oral evidence held that the plaintiff failed to prove the allegation of fraud and that the institution of Regular Civil Suit No.30 of 1992 was within the knowledge of the plaintiff as she was duly served. The trial Court partly decreed the suit rejecting the relief of declaration and mandatory injunction and granted injunction restraining the Defendant from obstructing the Plaintiff's possession without due process of law.

7. Against the judgment of the trial Court, the plaintiff filed Regular Civil Appeal No.22 of 2008. The Appellate Court framed the following points for determination and answered the same, which reads thus:

<i>"S.No.</i>	<i>Points</i>	<i>Findings</i>
1.	<i>Whether Plaintiff proved defendant had obtained ex-parte decree in RCS No.30/1992 by fraud ?</i>	<i>In the negative.</i>

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| 2. | <i>Whether Judgment and decree in RCS No.30/1992 is null and void ?</i> | <i>In the negative.</i> |
| 3. | <i>Whether the Judgment and decree passed in RCS No.03/2001 calls for interference ?</i> | <i>In the negative.</i> |
| 4. | <i>What order ?</i> | <i>As per final order.”</i> |

8. The Appellate Court re-appreciated the evidence on record on the aspect of service of summons and held that there was sufficient evidence on record to prove that the institution of Regular Civil Suit No.30 of 1992 was within the knowledge of the plaintiff. As regards the allegations of fraud, the Appellate Court held that the provisions of Order VI Rule 4 of the Code of Civil Procedure, 1908 (for short, “CPC”) provides that the particulars of fraud must be given and general allegation is not sufficient to prove the fraud and held that in the case on hand, the fraud played by defendant is not proved.

9. Heard Mr. Shah, learned counsel appearing for the Appellant and Mr. Patil, learned counsel appearing for the Respondent Nos 1A to 1F, 2, 3A, 4 and 5.

10. Learned counsel for the Appellant would submit that the

Appellate Court while considering the issue of fraud has not rendered any finding on the aspect of fraud pleaded. Pointing out to paragraph 3A of the Pleint, which was amended during the pendency of the Appellate proceedings, he would submit that specific case of fraud was pleaded that the agreement of re-conveyance dated 20th December, 1980 was not signed by her husband, as the plaintiff's husband used to sign in *Modi script* and the signature of the plaintiff's husband on the document of 20th December, 1980 was in Marathi. He would contend that the substantial question of law arising is absence of findings of the Appellate Court on aspect of fraud rendering the judgment perverse.

11. Considered the submissions and perused the record.

12. Learned Counsel for the Appellant has rightly not advanced any arguments on the concurrent findings of fact as regards the service of summons upon the Plaintiff as the concurrent findings are based on proper appreciation of the evidence on record. The only submission canvassed is that as there is no finding of the Appellate Court on aspect of fraud, there is

perversity and as such substantial question of law arises. Perusal of the amended paragraph 3A of the Plaintiff indicates that fraud is pleaded as the signature stated to be the Plaintiff's husband appearing on the deed of reconveyance was in Marathi whereas the Plaintiff's husband used to sign in Modi script. After the plaint came to be amended at the appellate stage, no application seeking permission for leading additional evidence to establish fraud was preferred by the Plaintiff and resultantly no evidence to substantiate the amended plea of fraud was adduced. The contention of Mr. Shah, learned Counsel for the Plaintiff that despite there being no evidence on record, the Appellate Court was enjoined to consider the pleading and render a finding on the aspect of fraud is only liable to be rejected. Pleading does not constitute evidence and the Appellate Court while adjudicating the Appeal has rightly re-appreciated the evidence which was on record. As there was no additional evidence led by the Plaintiff to substantiate the case of fraud pleaded in the amended plaint, the Appellate Court could not have rendered any finding on the amended pleading. The Appellate Court has rightly considered the

provisions of the Order VI Rule 4 of the CPC in the context of the allegations of non service of suit summons and mentioning of incorrect address. As such there is no perversity in the findings of the Appellate Court.

13. Having regard to the discussion above, no substantial question of law arises in the present case. Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Application does not survive for consideration and same stands disposed of.

14. At this stage, request is made for continuation of the interim relief for further period of four weeks. The said request is opposed by the learned counsel for the Respondents. As the interim relief has been operating for a sufficiently long time, the same is extended for further period of four weeks.

(Sharmila U. Deshmukh, J.)