



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO.782 OF 2024 IN
SECOND APPEAL NO.164 OF 2024

Gaurishankar S/o Ramcharan Kumbhalwar and another .Vs. Antakala Wd/o Ramesh
Kumbhalwar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.R. Joharapurkar, Adv. a/w Shri V.H. Pandey, Adv. for appellants.

CORAM : SANJAY A. DESHMUKH, J.
DATED : 12/09/2024

1. This is an application for grant of permission to produce memo of first appeal, pleadings and exhibited documents.

2. Considering peculiar set of facts and the reasons stated in the application, the application deserves to be allowed. The application is **allowed** and **disposed**.

SECOND APPEAL NO.164 OF 2024

1. This Court after hearing the advocate for the appellant passed an order dated 05.08.2024 that no any substantial question of law arises for determination and decision. On the request of Shri Pandey, learned advocate for the appellant some time for research of case laws etc. was granted.

2. The learned advocate Shri Joharapurkar, for appellant today submitted on behalf of appellant that, the issue of limitation was not properly considered by the trial Court as well as first Appellate Court. He further pointed out that, even in the cross examination of the plaintiff, she could not identify the signature of her husband, this fact was not properly considered and appreciated by the trial Court as well as first Appellate Court. He pointed out notice and its reply given by the appellant and respondent to each other. The learned advocate Shri Joharapurkar, for the appellant submitted that, the agreement to sell is not proved. He pointed out the various documents on record which were exhibited in the trial Court. He submitted to admit appeal by forming substantial questions of law that whether suit is barred by limitation or not.

3. Perused the impugned judgment and judgment of the trial Court.

4. As far as question of limitation is concerned, it being question of law and fact i.e. mixed-question of law and fact, the trial Court as well as first Appellate Court both have considered it after appreciating and re-appreciating the evidence on record along with matter before it.

5. The notice reply given by the respondent is of denial. No stand of fraud is taken by the defendant. In civil

cases, strict proof is not required. In civil cases, the standard of proof is preponderance of probability. Therefore, the learned trial Court as well as first Appellate Court rightly held that Gaurishankar-appellant is the subsequent purchaser of the suit property who was having knowledge of the said transaction. It is also held that, he is not a bonafide purchaser for value without notice of suit property.

6. Considering all these aspects, the learned trial Court and first Appellate Court rightly held that the suit was filed within the limitation and the appellant is not bonafide purchaser for values without notice who is family member of the appellant and respondent. There is concurrent findings of both the Courts on the facts.

7. The learned advocate for the appellant lastly submitted that the sale deed executed in favour of the appellant dated 10.11.2009 is void and the plaintiff has not prayed for its declaration that it is not binding upon him or to declare that it is illegal.

8. When the issue as to bonafide purchaser for value without notice is decided by the trial Court and first Appellate Court and it was held that appellant Gaurishankar is not bonafide purchaser for value without notice, there is no necessity to declare that sale deed is not binding on plaintiff or it is illegal.

9. The judicial discretion is exercised by both Courts and there is no scope to interfere in it. Considering aforesaid reasons, there is no any substantial question of law to form and to decide which is mandatory requirement of the second appeal as per Section 100 of the Code of Civil Procedure, 1908. The appeal being devoid of merit deserves to be dismissed.

10. The appeal is **dismissed**.

(SANJAY A. DESHMUKH, J.)