



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 151 OF 2014
WITH
CIVIL APPLICATION NO. 1359 OF 2013
IN
SECOND APPEAL NO. 151 OF 2014

RAMRAO S/O KISANRAO TAWARE AND ANR.
VERSUS
JAWAHAR S/O MADANLAL SARADA AND OTHERS

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Advocate for Appellants : Mr. V.D. Salunke
Advocate for Respondent No.1 : Mr. B.A. Dhengle
Advocate for Respondent no.4 : Mr. A.R.Gaikwad

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 12.11.2025

PRONOUNCED ON : 20.11.2025

PER COURT :

Heard both sides. Parties are referred to by their status in Trial Court.

2. Being aggrieved by concurrent findings of facts, original plaintiffs have preferred this second appeal. They are non suited for relief of declaration and possession in Regular Civil Suit No. 314/2001. Both Courts below held that their suit is barred by limitation, the sale transactions by which they purchased part and parcel of the suit land vide Exhs. 85 and 86 are subjected to the decision of Regular Civil Suit No. 308/1977 and would not enure to their benefit. Their plea that defendant no. 2 Shivaji committed fraud in compromising Second Appeal No. 48/1994 has not been accepted.

3. Under above premise, learned counsel Mr. V.D. Salunke submits that the sale-deeds were executed subject to out come of RCS No 308/1977 and plaintiffs had tried to intervene in the Regular Civil Appeal No. 192/1983. After learning the compromise in the Second Appeal, a review was filed. Thereafter present suit is filed which is perfectly within limitation. It is submitted that defendant no. 1 Shivaji despite selling the properties by

registered sale-deeds in favour of the plaintiffs, compromised the matter with defendant no. 1 and has committed fraud, which vitiates the compromise decree. It is further submitted that sale-deed executed by Narayan in favour of defendant no. 1 on 11.7.1977 is bad in law, because he was not exclusive owner and it was rightly challenged in RCS No. 308/1977. It is further submitted that there are substantial questions of law and appeal needs to be admitted.

4. Learned counsel Mr. Dhengale appearing for respondent no.1 supports impugned judgment and decree. It is submitted that the plaintiffs did not intervene in Regular Civil Suit No. 308/1977 and their sale-deeds are hit by Section 52 of the Transfer of Property Act. It is further submitted that the real mischief monger is defendant no. 2 Shivaji, who sold the suit lands to the plaintiffs when he was aware that already those lands were sold by his elder brother Narayan in favour of defendant No. 1 Jawahar. It is submitted that concurrent findings of facts cannot be interfered with.

5. The land Gat No. 217 was joint family property. Defendant no. 1 and his elder brother Narayan with their mother Gangubai were the owners of the same. It was mortgaged with the defendant no. 1 Jawahar by registered deed dated 16.07.1973 and since then it was in his possession. Later on, on 11.07.1977 he purchased it from Narayan. R.C.S. No. 308/1977 was filed by defendant no. 1 Shivaji for partition and possession in respect of Gat No. 216, 217 and 218. The sale-deed executed on 11.07.1977 by Narayan in faovur of the defendant no. 1 was also challenged. Present plaintiffs were not party to RCS No. 308/1977. The plaintiffs are claiming to be owner of part and parcel of land Sy. No. 217 vide two sale-deeds dated 04.05.1982 Exh. 85 and 86 executed by defendant no. 2 Shivaji and his mother Gangubai. Those sale-deeds were executed during pendency of RCS No. 308/1977. It was specifically mentioned in the sale-deeds that handing over of possession would be subject to outcome of the suit. The suit was partly decreed vide judgment dated 25.04.1983 in respect of gat No. 216

and 218 it was dismissed against Gat No. 217. Being aggrieved Shivaji had preferred RCA No. 192/1983. It was allowed on 05.11.1993. Thus, entire suit came to be decreed. The respondent no. 1 preferred Second Appeal No. 48/1994. A compromise was entered into by him and Shivaji, thereby, accepting decree passed by Trial Court. Later on defendant no. 1 sold suit land on 28.06.2000 to defendant no. 3. Thereafter, defendant no 3 sold it to defendant no. 4 on 26.03.2004.

6. It has been pointed out by learned counsel Mr. Salunke that when Regular Civil Appeal No. 192/1983 was pending, plaintiffs had filed application Exh. 22 for intervention. It was rejected on 09.01.1990. The order was not challenged further. After learning the compromise decree passed in second appeal referred above, applicant preferred Review Application No. 1525/2000. The application was permitted to be withdrawn with liberty to file appropriate proceedings, vide order dated 15.01.2001. Thereafter, present suit is instituted on 24.08.2001.

7 The plaintiffs purchased the suit land vide sale-deed dated 04.05.1982. Prior to that the suit land was sold by elder member of the family to defendant no. 1 Jawahar on 11.07.1977. The land was in his possession due to mortgage dated 16.07.1973. The sale-deed executed in favour of the plaintiffs bears the recitals that possession would be handed over after the decision of Regular Civil Suit No. 308/1977. The plaintiffs were not having possession and all the while the suit land was in possession of defendant no. 1 Jawahar. The limitation for relief of possession is provided by Article 65 of the Limitation Act. The plaintiffs were aware of the fact that their vendor had filed Regular Civil Suit No. 307/1977 in respect of self-same suit lands. They ran risk in purchasing the land despite having knowledge of pendency of the suit as well as possession with previous purchaser, defendant no. 1.

8. Regular Civil Suit No. 308/1977 was dismissed to the extent of the

suit lands vide judgment dated 25.04.1983. Being aggrieved, Regular Civil Appeal No. 192/1983 was filed and it was allowed on 05.11.1993. A categorical finding has been recorded by the Trial Court in Regular Civil Suit No. 308/1977 that land Survey No. 217/AA/2 was alienated for the legal necessity by the Karta of joint family and the suit was dismissed. The relevant operative order of the Trial Court is as follows:

“The suit of the plaintiff in respect of land S.No. 217/AA/2 for partition and for declaration of sale deed executed in favour of defendant no. 6 void, in operative is dismissed, also the suit of the plaintiff restraining the defendant no. 6 permanently from interfering in possession of the plaintiff over the suit land 217/AA/2 is dismissed.”

I am of the considered view that the possession became adverse on 25.04.1983 by pronouncement of the judgment. The suit for possession should have been filed within 12 years from 25.04.1983. It is inconsequential that later on appellate Court granted decree in the suit land also on 05.11.1993. The first cause of action was on 25.04.1983. Hence both Courts below have rightly held that suit is barred by limitation.

9. It has been specifically recited in sale-deeds Exh. 85 and 86 by the vendors-defendant no.2 Shivaji and his mother Gangubai that the possession would be subject to decision of Regular Civil Suit No. 308/1977. Already, sale-deed dated 11.07.1977 executed in favour of defendant no. 1 Jawahar was under challenge. The sale-deeds executed in favour of the plaintiffs are subsequent in time and those are hit by Section 52 of the Transfer of Property Act. Plaintiffs did not make any endeavour to implead them in Regular Civil Suit No. 308/1977, before the Trial Court. Their application (Exh. 22) was made in Regular Civil Appeal No. 192/1983. The order of rejection of their application passed on 09.01.1990, was not taken to the logical end. It left unchallenged. The plaintiffs only filed review application

after second appeal was being compromised. In that view of the matter, they are estopped from claiming any independent right on the basis of their sale-deeds. They were not diligent enough. They are the fence sitters. No relief can be granted to them.

10. Respondent no. 2 Shivaji sold suit lands on 04.05.1982 to the plaintiffs when already suit land was sold by Karta of the family Narayan, to the defendant no. 1 Jawahar on 11.07.1977. Again, defendant no. 2 Shivaji compromised with defendant no. 1 Jawahar in the Second Appeal No. 48/1994, which was detrimental to the interest of the plaintiffs. It was an overt act. The plaintiffs did not take any action against defendant no. 2 except filing of the present suit. It is the defendant no. 2, who is the mischief monger. No relief can be granted to the plaintiffs on the strength of their sale-deeds.

11. Narayan, who was elder brother of defendant no. 2 Shivaji had alienated suit land to defendant no. 1 Jawahar by registered sale-deed dated 11.07.1977. Though his sale-deed was challenged in Regular Civil Suit No. 308/1977, it was not quashed and set aside. The Trial Court in that suit held the validity of the transaction. The Appellate Court in Regular Civil Appeal No. 192/1983 reversed the decree. But by way of compromise, the decree passed by the Trial Court was accepted thereby endorsing validity to sale-deed. The order of High Court in Second Appeal No. 48/1994 accepting the compromise has not been challenged before higher forum, albeit review was filed unsuccessfully. The net result is that sale-deed in favour of defendant no. 1 is acted upon and treated to be legal. For the first time, the genuineness of that sale-deed cannot be questioned by the appellants in the High Court. There is vast difference in the alienation made by Narayan in favour of defendant no. 1 and alienations made by Shivaji and Gangubai in favour of plaintiffs subsequently.

12. Learned counsel Mr. Salunke has relied on the judgment of **Shamrao**

Ganpat Chintamani Vs. Kakasaheb Laxman Garde;l 2008(2) Mh.L.J. 819.

The proposition laid down in paragraph no. 12 cannot be disputed. This judgment will not help the appellants.

13. Reliance is placed on the judgment **Nangawwa Vs. Byrappa Shiddappa Hireknrabar and others; AIR 1968 Supreme Court 956**. Paragraph nos. 6 and 7 of the judgment depicts when the time of limitation reckons in case of fraud. The facts are distinguishable. This judgment will not help the appellants. In the case at hand, I have already recorded that limitation had reckoned on 25.04.1983.

14. Lastly, reliance is placed on the judgment of **A.V. Papayya Sastry and others Vs. Government of A.P and Ors. 2005 SCC 221** for the preposition that if the judgment is obtained by fraud, it is nonest. The ratio cannot be made applicable to the present case.

15. I find that no substantial questions of law would emerge in the second appeal. Concurrent findings of facts recorded by the Courts below cannot be faulted. The findings are reasonable and plausible.

16. The second appeal sans merit and it is dismissed.

17. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-