

MJ Jadhav

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 310 OF 2018
WITH
CIVIL APPLICATION NO. 677 OF 2018
WITH
CIVIL APPLICATION NO. 542 OF 2019
IN
SECOND APPEAL NO. 309 OF 2018**

Ismail Ibrahim Nardekar (Deceased ... Appellants
Through LRS)

vs.

Appasso Yashwant Pawar (Deceased ... Respondent
Through LRS)

Mr. Ramdas A. Shelke for the Appellants.

Mr. Tejpal S. Ingale for Respondent Nos.1A to 1F, 2A, 2B and 2D.

CORAM : GAURI GODSE, J.

DATED : 28th JANUARY 2025

ORDER:

1. This appeal is preferred by the plaintiff to challenge the judgment and decree passed by the first appellate court allowing the counter claim of defendant nos.2A to 2D. The counter claim is allowed by passing decree for partition and separate possession of half share to defendant nos.2A to 2D.

2. Learned counsel for the appellant submits that defendant nos. 2A to 2D though had filed written statement, failed to lead any

evidence. He submits that they were represented through defendant no.1, who is a stranger purchaser. He submits that defendant nos. 2A to 2D were represented through defendant no.1, based on an authority letter issued in favour of defendant no.1. He however submits that based on such an authority letter defendant no.1 would not get any right to prosecute the counter claim on behalf of the defendant nos.2A to 2D. He submits that the first appellate court erred in accepting the contentions of defendant nos.2A to 2D through defendant no.1. He further submits that the issue regarding representing defendant nos. 2A to 2D through defendant no.1 would raise a substantial question of law to be decided in this second appeal.

3. The plaintiffs had filed a suit for injunction to protect their joint possession in the suit property. The plaintiffs claimed that they had a preemptory right to purchase half share of defendant no.2 pursuant to the compromise entered into between the parties Regular Civil Suit No.24 of 1973. The defendant no.1 is a purchaser through defendant no.2. The plaintiffs had filed a separate suit for challenging the sale deed in favour of defendant no.1. There is no dispute that Regular Civil Suit No.252 of 1983 filed by the plaintiffs was partly decreed by declaring the sale deed in favour of defendant no.1 as null and void. The plaintiff's prayer for preemptory

right to purchase the share of defendant no.2 was not granted. The said decree has attained finality. Thus, there is no dispute that defendant nos. 2A to 2D have half share in the suit property. In view of the these facts, the first appellate court's decree granting share to defendant nos.2A to 2D cannot be faulted.

4. The plaintiffs' objection on the representation of defendant nos.2A to 2D through defendant no.1 is not required to be considered in this second appeal, in as much as defendant no.1 along with the defendant nos. 2A to 2D had preferred the first appeals against the decree passed in the plaintiffs' suit and dismissal of the counter claim filed by defendant nos.2A to 2D.

5. Even otherwise, the findings recorded by the first appellate court on the authority of defendant no.1 in terms of Rule 12 Order 1 of Code of Civil Procedure is based on the authority letter issued by defendant nos.2A to 2D. I do not see any error in the findings recorded by the first appellate court based on the undisputed authority letter issued by defendant nos. 2A to 2D in terms of Rule 12 Order 1 of the Code of Civil Procedure. Thus, there is no substance in the objection raised on behalf of the plaintiffs.

6. The first appellate court's decree for partition and separate possession in the counter claim is based on the admitted fact that

the plaintiffs and defendant nos. 2A to 2D are having half share in the suit property. There is no illegality or perversity in the reasons recorded by the first appellate court in allowing the counter claim of defendant nos.2A to 2D.

7. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

8. In view of the dismissal of the second appeal, pending application are disposed of as infructuous.

(GAURI GODSE, J.)