

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 262 OF 2017
WITH
CIVIL APPLICATION NO. 562 OF 2017**

Bhagirathi Babu Teli ... Appellants

Deceased through LRS

Laxmi Maruti Teli and Others

Vs.

Sanjay Eknath Mane ... Respondent

Mr. Shivaji Masal for the Appellants.

Mr. Om N. Latpate i/b. Mr. Kuldeep Nikam for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 21st JANUARY 2025

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the heirs and legal representative of the original defendant to challenge the judgment and decree passed by the first appellate court. The trial court had initially dismissed the plaintiff's suit for injunction based on title. In the first appeal preferred by the plaintiff, the suit is decreed by passing a decree for injunction restraining the defendant from disturbing the plaintiff's possession over the suit property.

2. The learned counsel for the appellants submits that all the revenue records indicate that the defendants are in possession of the suit property. Learned counsel for the appellants submits that the suit property originally was in the name of defendant's son Maruti. He submits that by sale deed dated 24th February 1964 defendant's husband i.e. Maruti's father executed sale deed as guardian in favour of plaintiff's father. He submits that the sale deed was executed when Maruti was a minor is not a valid sale deed. He submits that based on invalid document the plaintiff would not get any title to the suit property to seek a decree for injunction.

3. The learned counsel for the appellants relied upon the findings recorded by the trial court to hold that the revenue record also indicates possession of the defendant. He further submits that the sale deed is also hit by the provisions of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ["The Fragmentation Act"] and thus the plaintiff would not be entitled to any decree of injunction. He thus submits that the second appeal would require consideration on the point of the plaintiff's title based on invalid document. He further submits that the second appeal would also require consideration on the point of incorrect appreciation of the evidence on record and more

particularly revenue record which shows that defendant is in possession of the suit property.

4. I have considered the submissions made on behalf of the appellants. It is not in dispute that the sale deed executed in favour of the plaintiff's father was never challenged. Learned counsel for the appellants submitted that Maruti expired sometime in the year 1998. The sale deed based on which the plaintiff claims title is dated 24th February 1964. Admittedly, neither Maruti's father who signed the sale deed nor Maruti, after having attained majority has challenged the sale deed. Nothing is placed on record to indicate that the sale deed was declared invalid under the provisions of the Fragmentation Act.

5. Learned counsel for the appellants relied upon an order dated 8th March 2002 passed in RTS proceedings under which the mutation entry in favour of the plaintiff's father was cancelled. There is no dispute that order dated 8th March 2002 is passed in RTS proceedings. However, the revenue authorities would not have any jurisdiction or power to decide validity of the sale deed in favour of the plaintiff's father. In the absence of any declaration challenging the title of the plaintiff's father the suit for injunction based on title is rightly decreed by the first appellate court. The first appellate court

has recorded findings of facts based on 7/12 extract since the year 1967 to hold that plaintiff's father and plaintiff are in possession of the suit property based on the sale deed in favour of the plaintiff's father.

6. The first appellate court being the last fact finding court has examined the evidence on record and thus held that the plaintiff is in possession of the suit property. In view of the undisputed sale deed in favour of the plaintiff's father, defendant would not have any right in the suit property. Thus, in the absence of any right, title or interest in favour of the defendant, the appellants would not be entitled to obstruct the plaintiff's possession. Hence, the first appellate court has rightly reversed the trial court's findings. I do not see any illegality or perversity in the reasons recorded by the first appellate court.

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

8. In view of dismissal of the second appeal, civil application is disposed of as infructuous.

[GAURI GODSE, J.]