



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 990 OF 2024

Jayesh Chunilal Doshi

...Appellant.

Versus

Kalavanti Chunilal Doshi

Since deceased Thr. L.Rs. and Another.

...Respondents.

*Mr. Satyavan N. Vaishnav, Ms. Nupur J. Mukherjee and Ms. Jasmine Sabharwal
i/b M/s. N. N. Vaishnawa & Co., for the Appellant.*

Ms. Sapna Rachure for the Respondent No. 2.

*Mr. Nitesh Bhutekar, Mr. prathamesh Mandlik and Ms. Priyanka Lanke for the
Respondent No. 1.*

Coram : Sharmila U. Deshmukh, J.

Date : March 10, 2025.

P. C. :

1. First Appeal is preferred against the judgment dated 19th March 2024 dismissing the suit filed by the Appellant herein seeking partition and separate possession of property.
2. The case of Appellant in the plaint was that suit property, which is a flat, was purchased jointly by the Plaintiff, Defendant No.1 and brother of Plaintiff by agreement of 21st June 1981. It was further contended that in view of the said agreement, the Plaintiff is co-purchaser and co-owner of the property and he would have a share in the suit flat. The Trial Court after considering the evidence on record

dismissed the suit.

3. The Trial Court held that initial burden of proving that the Plaintiff has a share in the suit flat was upon the Plaintiff, however, the Plaintiff has not been able to prove the execution of agreement dated 21st June 1981. The Trial Court further held that in the year 1981, the Plaintiff was minor and therefore he was not competent to enter into contract and therefore the Plaintiff has not proved that he was co-owner and dismissed the suit.

4. From the consideration of documents as well as evidence on record, the admitted position is that agreement of suit flat executed on 21st June 1981 is alleged to have been executed by the Plaintiff along with the Defendant and other brother. It is also admitted that in the year 1981, Plaintiff was a minor and was not competent to enter into contract. The entire basis for the suit was that the Plaintiff had jointly purchased the suit flat along with other brother and therefore has 20% share in the suit premises.

5. Considering that the Plaintiff was not competent to enter into contract, he did not acquire any right under the agreement dated 21st June 1981 and therefore he is not in a position to prove that he has 20% share in the suit premises. The entire basis of seeking 20% share as co-owner and co-purchaser is demolished.

6. The Trial Court after considering the settled position in law has

rightly dismissed the suit.

7. In light of above, First Appeal stands dismissed.

8. In view of the disposal of First Appeal, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]