



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.401 OF 2024

Laikh Jafar Tamboli

...Appellant

Versus

Abbas Khan Akram Khan Pathan (Died),
Through L.Rs. Khairunisa Begum & Ors.

...Respondents

Adv. Hamzakhan Ismailkhan Pathan for the Appellant.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 28th NOVEMBER 2024.

PC.:-

1. Heard Mr. H. I. Pathan, learned Advocate appearing for the Appellant.

2. Mr. Pathan would submit that Appellant is a purchaser of the Shop No.B-247, admeasuring 14/25 feets from Defendant No.1. The Plaintiff who is brother of Defendant No.1 had instituted Regular Civil Suit No.23 of 2006 claiming relief of partition in respect of house property as well as the shop. The Defendant No.1 put up his case of previous partition and allotment of suit shop to him in year 1998, since then name of Defendant No.1 was recorded in the Municipal Tax Register. He would submit that infact father of Appellant was tenant in the shop and later on Defendant No.1 executed the sale deed.

3. According to Mr. Pathan, present Appellant was not noticed about pendency of suit at the time of execution of sale deed dated 20th November 2006. He was not party to the suit. The suit of Plaintiff was decreed the theory of Defendant No.1 regarding previous partition of suit shop has been rejected. Consequently, Plaintiff is granted share in the suit shop only. Mr. Pathan would also submit that insofar as house property is concerned, Trial Court accepted theory of previous partition. The Defendant No.1 filed appeal against the decree of Trial Court. However, the said appeal came to be dismissed. During pendency of appeal, present Appellant was added as party Respondent. In light of the aforesaid facts, Mr. Pathan proposes the following questions of law.

(v) *The Learned First Appellate Court ought to have considered that, though the witness admitted that original defendant no.1 has inducted as a tenant in the suit shop and the name of the original defendant no.1 is recorded in revision register in the year 1998 and still they have not objected it till 2006, thus the theory of oral partition between the parties pleaded by the defendant no.1 appears to be probable and acceptable in the light of fact that Court has accepted the oral partition in respect of house property. Thus, accepting part of the fact and denying the rest of the fact that to without any specific evidence on record is erroneous and illegal. Thus, the impugned order needs to be quashed and set aside.*

(vi)

(vii) *Whether in the fact and circumstances of the case of appellant, it needs grant of opportunity to lead evidence to prove the fact of bonafide purchaser without notice in favour of appellant ?*

(viii) *Whether the suit is within limitation from the date of transfer of suit shop in the name of original defendant no. 1 in 1998 ?*

4. Having considered submissions advanced and after considering reasoning adopted by the Courts below, *prima-facie*, aforesaid questions of law may arise for consideration in the second appeal. However, before framing aforesaid questions of law and admitting the appeal, it would be appropriate to issue notice to the Respondents and grant opportunity to advance their submissions on the aforesaid aspects.

5. Hence, issue notice to the Respondents, returnable on 30th January 2025.

6. Call for record and proceedings.

(S. G. CHAPALGAONKAR, J.)