

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 698 OF 2007

Shidramappa Daulatappa Kavale ...Appellant.

Vs.

Shivaji Paroji Dhajal & Ors. ...Respondents.

Mr.Surel S.Shah for the Appellant.

Mr.K.Y.Mandlik for Respondent Nos. 2 and 3.

CORAM : ANOOP V. MOHTA,J.

DATED : 31st March, 2008

P.C.

. The present Second Appeal is preferred by the Original Respondent No.5 who had purchased the property from Respondent Nos. 3 and 4 and who was made party for the first time in the Regular Civil Appeal No. 437/1997 filed by original Defendant against whom the Trial Judge by judgment and order dated 28th August, 1997 passed the decree and declared that the Judgment and decree in Special Civil Suit No.46 of 1974 and the Special Darkhast No.49 of 1984 are not binding on Respondent - Original plaintiff Nos. 1 and 2. The lower Appellate Court after considering the material placed on record, dismissed the Appeal. There is no challenge made by the

original Defendant. The impugned judgment and order passed by the lower Appellate Court become final and binding so far as the original Defendant is concerned.

2. The Appellant herein, who is made party for the first time in the Appeal, has purchased the property pending the proceedings, agitating certain additional finding on the foundation that the learned Lower Appellate Court ought to have given an opportunity for contesting the proceeding.

3. Admittedly, the right of Appellant i.e. original Respondent Nos.5 flow only through the Defendants-Original Respondent Nos. 3 and 4, who purchased the property and later on sold to Respondent No.5. The Appellate Court, therefore, has rightly observed in para 14 as under:-

"14. It is surprisingly enough to note that during the pendency of the appeal the Defendant sold the suit property to the Respondent Nos. 3 and 4, who on their term sold it to the Respondent No.5. Both the sale transactions are made during the pendency of the appeal and hence they are hit by doctrine of lis-pendence. The said sale transactions are not legal and binding upon the plaintiff No.1. They are liable to be set aside in this appeal itself."

4. The another transaction, pending the proceedings with reference to the claim of the properties, it is considered on the basis of the doctrine of lis-pendence, therefore is in no way support the case of the Appellant and in the present matter. The said doctrine of lis-pendence itself cleared that the subsequent purchaser has no right, whatsoever, basically in this case. After hearing the Appellant-original Respondent No.5 and the person against whom the decree was passed who contested the appeal and the Appellate Court has decided the matter. Having once taken note of the submission raised by the original Defendant, there is no question of giving another opportunity and or fresh opportunity to the subsequent purchaser like Respondent No.5 in question. He has no better right than original owner of the property.

5. In view of the order dated 28/08/1997, there was no question of any transfer pending the matter in court, therefore, the lower Appellate Court is right in passing the order dated 22/09/2003 declaring that the sale made during the pendency of the appeal in favour of Respondent Nos.3 and 4 and in favour of Respondent No. 5 are set aside. The registered documents of Respondent are also cancelled,

accordingly.

6. In totality, I am of the view that there is no case made out by the Appellant and basically any substantial questions of law.

7. In view of this, the Appeal is dismissed.

. No costs.

(ANOOP V. MOHTA, J.)