

Shevantabai Maruti Kalhatkar

Vs

Ramu Rakhamaji Kalhatkar and Another

Civil Appeal No. 1268 of 1995

(G.T. Nanavati, S.P. Kurdukar JJ)

15.10.1998

JUDGMENT

NANAVATI, J. -

1. This appeal filed by the original owner of the suit land is directed against the judgment of the High Court of Bombay in Second Appeal No. 221 of 1983.
2. Pursuant to an agreement of sale, the appellant sold the suit land to the respondents under a registered sale deed. On the basis of the sale in their favour, the respondents filed a suit for possession in the Court of the Civil Judge, Junior Division, Khed. The trial court decreed the suit in spite of the objection raised by the plaintiff (sic appellant/defendant) that the sale transaction was void as the land was a fragment and sale of such land is prohibited under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.
3. Aggrieved by the Judgment and decree passed by the trial court, the appellant preferred an appeal to the Court of Extra Assistant Judge, Pune. The learned Assistant Judge allowed the appeal as he was of the opinion that the sale transaction was void and therefore the respondents did not derive any title to the land thereunder. The respondents approached the High Court and their appeal has been allowed.
4. The only contention raised by the learned counsel for the appellant is that the land being a fragment, the sale in favour of the respondents was void and therefore it was rightly declared by the first appellate court to be so. We find no substance in this contention. The competent authority, on a reference being made to it by the trial court under Section 36-B of the Act, had held that the sale is valid. The High Court was therefore right in holding that it was not open to the first appellate court, being a civil court, to go behind the order passed by the competent authority. Section 36-A of the Act clearly bars jurisdiction of the civil court to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by the State Government or any officer or authority.
5. The appeal is, therefore, dismissed. No order as to costs.