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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.2 OF 1990

1. Shivappa s/o Laxman Raksale APPELLANTS
(Since deceased Through L.Rs.)

1-a) Bapurao s/o Shivappa Raksale,
Age-51 years, Occ – Service & Agriculture
R/o Lohara, Taluka-Udgir,
District - Latur

1-b) Uddhav s/o Shivappa Raksale,
Age-39 years, Occ – Agriculture
R/o Lohara, Taluka-Udgir,
District - Latur

1-c) Sau Kevalbai w/o Sidram Sontakke,
Age-48 years, Occ – Household
R/o Lohara, Taluka-Udgir,
District - Latur

1-d) Sau Kamalbai w/o Sangram Dadge,
Age-45 years, Occ – Household
R/o Yerol, Taluka- Shirur Anantpal,
District - Latur

1-e) Sau Godabai w/o Shivraj Dadge,
Age-42 years, Occ – Household
R/o Yerol, Taluka-Shirur Anantpal,
District - Latur

1-f) Sau Kaushabai w/o Umakant Bellale,
Age-37 years, Occ – Household
R/o Sawargaon (Rokda), Taluka-Ahmedpur,
District - Latur

2. Kashinath Laxman Raksale
Age-59 years, Occ-Agriculture
R/o Lohara, Taluka-Udgir,
District-Latur

VERSUS

1. Prayagbai w/o Somakant Patil RESPONDENTS
2. Trimbakrao @ Baburao s/o Shamrao Patil
(Since deceased through L.Rs.)
- 2A) Basavraj Trimbakrao Patil,
Age-47 years, Occ-Agriculture
R/o Lohara, Taluka-Udgir,
District - Latur
- 2B) Shivshankar Trimbakrao Patil,
Age-44 years, Occ-Agriculture
R/o Lohara, Taluka-Udgir,
District – Latur
- 2C) Shridhar Trimbakrao Patil,
(Since deceased through L.Rs.)
- 2C.1) Vijaymala w/o Shridhar Patil,
Age-40 years, Occ-Household
R/o Lohara, Taluka-Udgir
District – Latur
- 2C.2) Deepali d/o Shridhar Patil,
Age-21 years, Occ-Household
R/o Lohara, Taluka-Udgir
District – Latur
- 2C.3) Mrinal d/o Shridhar Patil,
Age-17, Occ-Nil
Minor U/g R-2C-1
R/o Lohara, Taluka-Udgir
District – Latur
- 2C.4) Pratik s/o Shridhar Patil,
Age-17 years, Occ-Nil
Minor U/g R-2C-1
R/o Lohara, Taluka-Udgir
District – Latur
- 2D) Sau. Anita w/o Trimbakrao Patil,
Age-50 years, Occ-Household
R/o Lohara, Taluka-Udgir, District – Latur

2E) Sangmeshwar Trimbakrao Patil,
Age-7 years, Occ-Nil
Minor u/g Respondent No.2D
R/o Lohara, Taluka-Udgir
District – Latur

2F) Yogesh Trimbakrao Patil,
Age-4 years, Occ-Nil
Minor u/g Respondent No.2D
R/o Lohara, Taluka-Udgir,
District- Latur

3. Girjabai w/o Shamrao Patil,

4. Kalubai w/o Balwantrao Patil

5. Hirkanbai w/o Vishwanath Nandgaule
(Since deceased Through L.Rs.)

5a) Vishwanath s/o Lingram Nandagaule,
(Died in 1991 his LR's also as follows)

5b) Shivraj Vishwanath Nandgaule
Age-38 years, Occ-Business
R/o Manthale Nagar,
Latur

5c) Babu @ Basawraj Vishwanath Nandagaule,
Age-35 years, Occ-Business
R/o Wadval (Nagmat), Taluka-Ahmenagar

5d) Sidheshwar Vishwanath Nandagaule **DISMISSED**

5e) Gangabai Iranna Dharasheve,
Age-40 years, Occ-Household
R/o Almala, Taluka-Ausa
District – Latur

5f) Kamlabai Maruti Dhage,
Age-29 years, Occ-Household
R/o Lohara, Taluka-Udgir

5g) Sushilabai Manohar Birajdar,

Age-25 years, Occ-Household
R/o Kehetrapphal, Post Kumtha (Khurd)
Taluka-Udgir

5h) Sow. Laxmibai Baburao
Age-27 years, Occ-Household
R/R/o Pimpalwadi (Sangeyachiwadi),
Taluka-Gangakhed, District-Parbhani

5i) Umabai Vishvanath nandagaule

ABATED

6. Rukminibai Govindrao Bhandare

7. Subhadrabai Manikrao Shelkar

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Mr. Umakant. K. Patil, Advocate for the appellants
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[CORAM : N. W. SAMBRE, J.]

DATE : 15th JANUARY, 2015

ORAL JUDGMENT :

1. Present second appeal is by original defendants No.10 and 12.

2. Original plaintiff Prayagbai i.e. respondent No.1 to the present second appeal filed Regular Civil Suit No. 217 of 1977 in the court of Civil Judge, Junior Division, Udgir, for partition and possession.

3. In said suit, the plaintiff and defendants No.1 & 3 to 6 are daughters and son of one Shamrao Patil, who expired on 1st

February, 1968, whereas defendant No. 2 is the mother of plaintiff and other defendants.

4. Said deceased Shamrao Patil was owner and in possession of ancestral properties bearing Survey No.72, 73 and 227 and houses bearing Nos. 243, 253, 257 all situated at Lohra, Taluka-Udgir, District - Aurangabad.

5. It is claimed that defendant No.1 Trimbakrao was also son of said Shamrao and was addicted to bad vices. Defendants No. 7 to 18 were friends of defendant No.1. Said defendants No. 7 to 18 have supported bad vices of defendant No.1 and as such, caused transfer of the properties from him, including that of suit property. It is urged that there was no legal necessity to transfer or alienate suit properties by defendant No.1 and as such, claimed 1/4th share as daughter of Shamrao, in the property.

6. Defendant No.1, vide Exhibit-50 filed his written statement and admitted the claim put forth by the plaintiff. He claimed that sale deeds executed in favour of defendants No. 7 to 18 are towards security of amounts borrowed by him from said defendants.

7. Defendants No. 7, 8, 10 and 12 submitted their written

statement at Exhibit-67 admitting relationship between the plaintiff and defendants No. 1 to 6. It is also admitted by them in their written statement that the suit property was ancestral property of deceased Shamrao, however denied that defendant No.1 was addicted to bad vices.

8. Defendant No.10, present appellant No.1, claimed to be protected tenant of land survey No.72. According to him, he has purchased 10 acres of land out of survey No.72, and a certificate to that effect is issued by the Tenancy Court in his favour. It is further claimed by defendants No.10 and 12 that the land survey No. 73 to the extent of 7 acre for consideration of Rs.15,000/-, vide sale deed dated 21st December, 1973 was purchased. It is further claimed by defendant No.10 that defendant No.1 made defendant No.10 to believe that he was adopting agricultural profession and for that purpose he sold said land to present appellants. Defendants No. 10 and 12 further claimed that they sold their own land to one Kashikath and purchased the land in question.

9. Having regard to the claim put forth by the respective parties, the trial court framed issues and answered the same.

10. Relevant issues for the claim put forth by the present

appellant – original defendant, that fall for consideration of this Court, amongst others framed by the trial court, in my opinion are as follows:

1. Does the plaintiff prove that transactions did by Defendant No.1 are not binding upon her share?
 2. Does Defendants Nos. 7, 8, 10, 12, 17, 18, 19 and 13 prove that deceased Shamrao had contracted to sell suit lands for family necessity and in furtherance of provisions contract Defendant No.1 executed sale deeds after taking consideration amount?
11. Learned trial court, having regard to the claim put forth by the respective parties, decreed the suit with following observations:

ORDER

The plaintiff is entitled for 1/21st share in the suit property particularly land S. No. 72 excluding western 10 acres, portion, 73 and 227 and in House No. 243 situated at village Lohara, Taluka-Udgir

The suit is dismissed against the Defendants Nos. 14, 15 and 16 and against Defendant No.10 to the extent of 10 acres land from western side of S. No.72.

The sale deeds appearing in favour of the Defendants about the suit property i.e. House Nos. 243 S. No. 73, 227 and 72 (excluded 10 acres portion from western side) executed by Defendant No.1 are not binding on the Plaintiff.

The Plaintiff is entitled for possession by evicting the Defendants, who are in possession of these properties.

Decree be drawn accordingly.

Decree be sent to the Collector for partition of landed property with direction to partition the property by himself or by any other subordinate authority duly authorised by him and put the Plaintiff in possession of it.

The Commissioner be appointed in execution of decree for partition of the house and possession of the plaintiffs share be delivered thereafter.

The Plaintiff shall bear the costs of the suit of the Defendants No.14, 15 and 16.

The remaining defendant shall bear their own costs and costs of the plaintiff of this suit.

12. The present appellants, feeling aggrieved thereby preferred Regular Civil Appeal No. 82 of 1983 along with other appeals preferred by other parties before the Court of Additional District Judge, Latur. The Additional District Judge, Latur by judgment and decree dated 19th January, 1989, was pleased dismiss said appeal. As such, present second appeal.

13. Mr. Umakant Patil, learned counsel for the appellant-defendants No.10 and 12 has invited my attention to the observations made by learned trial court and the lower appellate court. He submits that two submissions were canvassed by them in the appeal, which are in relation to the property bearing survey No. 72 to the extent of 10 Acre and property survey No. 73 to the extent of 7 Acres. He submits that once the property in question was purchased by them, it was expected of by both the courts below to grant protection by accepting that the property to the extent purchased by the appellants was from common hotchpotch. He submits that though the courts have granted relief to the extent of 10 acre of the land out of survey No.72, however, so far as land out of survey No.73 is concerned, no relief is granted by the learned courts below.

14. This Court has not framed any question of law at the time

of admission of present second appeal. In view of provisions of section 100 of the Civil Procedure Code, learned counsel for the appellant sought to raise question of law as regards whether the court below was right in dismissing the claim of the present appellant – defendant No.10 towards entitlement of 7 acres of land out of survey No.73, which was purchased by him vide sale deed dated 21st December, 1973.

15. After hearing learned counsel for the appellant – defendant No.10, it appears that the learned trial court, while dealing with the claim put forth by the present appellant in paragraph No.17 of the judgment has observed thus -

"17. The case of the Defendant No.10 is that he was in possession of land S. Nos. 72 and 73 as bataidar. He has received the certificate of the occupancy rights under the Hyderabad Tenancy and Agricultural Lands Act under Section 38 (6) Exhibit-107 is the certificate of ownership of the land S. No. 72/A to the extent of 10 Acre. This exhibit-107 clearly shows that the Defendant No.10 is the occupant of 10 Acres land out of S. No. 72/A. Exhibit-108 is the Judgment of tenancy Court, from this Judgment, it appears that the the Defendant No.10 was the tenant of land S. No.72 and he has filed an application under section 38 (6) of Hyderabad Tenancy and Agricultural Lands Act for declaring his preferential right to purchase the suit land to the extent of 5 acres. In this judgment

the sale deed in favour of Defendants No.9 and 11 was declared as invalid, holding that the Defendant is the tenant of S. No.72. The land S. No. 72 to the extent of 10 acres of which the Defendant No.10 was the protected tenant and later on declared as occupant in the year 1965. Exhibit 107 clearly shows that this Defendant became the owner of S. No.72/A to the extent of 10 acres from western side in the year 1963. Therefore, this portion of 10 acres also is not available to the parties for the partition at present. The ownership of deceased Shamrao was seized on 5th May 1963 to the extent of 10 Acres out of this S. No.72. This land is therefore, excluded from suit property.”

16. As such, what was not disputed was the purchase of 10 Acres of land out of survey No.72 by the present appellant out of Tenancy proceedings.

17. It is claim of the present appellants in the written statement that they were bataidar (tenant) of land in question i.e. survey Nos 72 and 73 and as such, have incurred certain privileges in said capacity, in relation to both the lands. Above referred observations of the trial court reflect that the competent authority under the Hyderabad Tenancy and Agricultural Lands Act has granted benefit in favour of present appellant to the extent of 10 acres out of survey No.72.

18. So far as claim of the appellant to the land out of survey No.73 is concerned, the appellant herein has put forth two fold claim. One, that he was tenant on the said land and he has purchased property in question by virtue of sale deed executed on 21st December, 1973. It appears that from the approach of the present appellants, as regards survey No.73 is concerned, there is no order or adjudication by tenancy court in their favour, qua purchase of said land by them from the tenancy court or otherwise any other competent authority.

19. So far as purchase of land by the appellants, as is claimed by virtue of sale deed dated 21st December, 1973 is concerned, but for referring to the said sale deed, it appears that before the lower appellate court neither said sale deed was exhibited nor any evidence to that effect was brought on record, so as to demonstrate that the appellant herein has rightly purchased property to the extent of 7 Acres out of survey No.73.

20. Learned trial court has granted declaration in favour of plaintiff – respondent No.1 for 1/21st share in said property, particularly land survey No.72 excluding 10 Acre portion, survey Nos. 73 and 227 and in the house No. 243 situated at Udgir. Learned trial court has dismissed the suit against present

appellants to the extent of 10 acres of land from western side of survey No.72. Learned trial court gave a declaration for present appellant – defendant No. 10 that sale deed executed by defendant No.1 qua, survey No.73 (as is claimed by the appellant) to the extent of 7 acres of land was held to be not binding on the plaintiff. The above referred observations are based on appreciation of evidence brought on record, particularly having regard to the claim qua survey Nos. 72 and 73. In view of above concurrent findings by the learned courts below and in my opinion both courts below in view of evidence on record, have rightly held against the present appellants and not granted them relief of 7 acres of land out of survey No.73, however granted relief in regard to the same in favour of plaintiff – respondent.

21. In that view of the matter, question of law, that is sought to be agitated by the present appellant, in my opinion does not call for any consideration. Second appeal which is devoid of merit, as such stands rejected.

[N. W. SAMBRE, J.]