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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.101 OF 2011

Harishchandra S. Pimple, since deceased
through L.Rs. Indumati H. Pimple & Ors.

...Appellants

V/s.

Shivaji N. Chaudhari & Ors.

...Respondents

Mr.Milind Deshmukh for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 4TH FEBRUARY, 2016.

P.C. :-

1. By this second appeal the appellants who are the legal heirs of the original plaintiff Harishchandra Sadashiv Pimple have impugned the order dated 20th October, 2010 passed by the learned District Judge-2, Pune allowing the appeal filed by the respondent no.1 (original defendant no.1) and setting aside the judgment and decree passed by the learned trial Judge dated 6th December, 2004, partly allowing the suit filed by the predecessors of the appellants herein. Some of the relevant facts for the purpose of deciding this second appeal are as under :

2. It was the case of the plaintiffs that the suit property being

property gat no.382 was ancestral property belonging to the predecessors in title of the plaintiffs and the defendant nos.2 to 4. Rambhau was the main ancestral. He had son by name Sadashiv. The said Sadashiv Pimple died leaving behind his wife – Muktabai, sons – Tukaram, Harishchandra, Dattoba and daughters Kantabai and Bebitai. The said Muktabai died in the year 1988. Tukaram also died by leaving behind his son by name Ashok.

3. During the life time of Sadashiv Pimple, he executed the sale deed dated 14th November, 1986 in favour of the original defendant no.1 for a consideration of Rs.30,000/-.

4. It was the case of the plaintiffs that the consent of the predecessor in title of the plaintiffs was not taken by the said Sadashiv Pimple before executing any such alleged sale deed in favour of the defendant no.1. It was also the case of the plaintiffs that the said alleged sale deed was bogus and fabricated. It was their case that the sale deed was executed in the office of the Joint Sub-Registrar, Pune instead of Khed with ulterior motive. It was alleged that the plaintiffs came to know about such alleged sale deed only when they approached the office of the Revenue Authority to mutate their names as legal representatives of Sadashiv Pimple.

5. The original plaintiffs therefore, filed a suit for declaration that the alleged sale deed was bogus and not binding on the plaintiffs

and for their share in the property. The suit was resisted by the original defendant no.1 on various grounds. It was denied that the sale deed was not executed by and between the said Sadashiv Pimple and the defendant no.1. It was also pleaded that though the said Sadashiv Pimple had sold the property in favour of the defendant no.1 due to legal necessity.

6. The defendant no.2 supported the case of the defendant no.1. Learned trial Judge framed six issues. After considering the documentary and oral evidence led by the parties, the learned trial Judge passed an order and decree on 6th December, 2004, allowing the said suit partly. The learned trial Judge declared that the sale deed executed by the said Sadashiv Pimple on 14th November, 1986 pertaining to the suit property in favour of the defendant no.1 was not binding upon the plaintiffs to the extent of their 7/25th share, the plaintiff nos.1-A and 1-B and 7/25th share of the plaintiff no.2 and cancelled the sale deed to that extent. The learned trial Judge also declared that the plaintiffs were entitled to get separate possession of their respective share through the Collector subject to the provisions made under section 54 of the Code of Civil Procedure.

7. Insofar as the declaration sought by the plaintiffs that the alleged sale deed was bogus is concerned, the learned trial Judge rejected the said relief prayed by the plaintiffs. The learned trial Judge

also rendered a finding that the defendant no.1 had failed to prove that the suit land was sold by the deceased for legal necessity of the joint family. The plaintiffs did not challenge the finding of the learned trial Judge that the sale deed executed by the said Sadashiv Pimple in favour of the defendant no.1 was illegal, bogus and not binding on the plaintiffs. The defendant no.1 however, impugned part of the reliefs granted by the learned trial Judge in favour of the plaintiffs by filing an appeal being Civil Appeal No.171 of 2005 in the Court of District Judge-2, Pune.

8. The lower appellate Court formulated six points for determination. By an order and judgment dated 20th October, 2010, the lower appellate Court allowed the said appeal filed by the defendant no.1 and has set aside the decree passed by the learned trial Court and dismissed the suit filed by the plaintiffs. This order and judgment dated 20th October, 2010 has been impugned by the original plaintiffs in this second appeal under section 100 of the Code of Civil Procedure.

9. Learned counsel appearing for the appellants (original plaintiffs) submits that there was no legal necessity of the said Sadashiv Pimple to sell the suit property. He submits that neither any notice had been issued to the plaintiffs nor their consent was obtained by the said Sadashiv Pimple before selling the ancestral

property in favour of the defendant no.1 He submits that the defendant no.1 also did not prove legal necessity of the said Sadashiv Pimple to sell the suit property in his favour. He submits that it was not the case of the defendant no.1 that the original plaintiffs had not contributed any amount for the maintenance or for taking care of the said Sadashiv Pimple. He submits that the lower appellate Court has not properly appreciated the evidence led by the plaintiffs and has erroneously set aside the findings and the judgment rendered by the learned trial Judge on the issue of legal necessary.

10. A perusal of the order passed by the learned trial Judge indicates that though the learned trial Judge has decided the issue that the defendant no.1 had not proved that the suit land was sold by the deceased Sadashiv Pimple for the legal necessity of the joint family has not recorded any reasons while rendering such finding against the defendant no.1.

11. Insofar as the finding of the learned trial Judge that the sale deed dated 14th November, 1986 executed by the said Sadashiv Pimple was not legal, bogus and not binding on the plaintiffs is concerned, the said finding has not been impugned by the plaintiffs by filing any appeal and has attained finality.

12. A perusal of the order and judgment delivered by the lower appellate Court indicates that the lower appellate Court has

independently rendered a finding that the plaintiffs have failed to prove that the sale deed dated 14th November, 1986 executed by the said Sadashiv Pimple in favour of the defendant no.1 was illegal, bogus and not binding upon the plaintiffs.

13. Insofar as the issue as to whether the defendant no.1 had proved that the suit property was sold by the said Sadashiv Pimple for legal necessity of the joint family is concerned, the learned trial Judge has decided the said issue in affirmative.

14. A perusal of the said order and judgment of the lower appellate Court clearly indicates that the lower appellate Court has discussed this issue at length in paragraphs 14 to 19 of the impugned order and judgment. The defendant no.1 had examined one Suryakant Govind Chaudhary, an attesting witness to the sale deed. The said witness deposed that the deceased Sadashiv Pimple affixed the thumb impression on the sale deed in his presence before the Sub-Registrar, Pune. The lower appellate Court also rejected the contention of the plaintiffs that the document i.e. the alleged sale deed was bogus on the ground that the sale deed was registered at Pune and not at Khed.

15. One of the plaintiff who was examined as witness by the plaintiffs i.e. Indumati Pimple had in her cross-examination admitted that the deceased Sadashiv Pimple was ill for about 5 to 7 months

before his death and was suffering from paralysis. When the said Sadashiv Pimple was ill the plaintiffs and other members of the family were staying at Mumbai. The defendant no.1 in his deposition had deposed that the deceased Sadashiv Pimple was in financial stringency and was indebted to many persons. The defendant no.2 was also the son of the deceased Sadashiv Pimple and staying with the said deceased Sadashiv Pimple on the date of execution of the sale deed and deposed that the said Sadashiv Pimple was in need of money and was witness to the transaction. The lower appellate Court relied upon the evidence of the defendant no.2 also and has rendered a finding that the defendant no.2, who also had an interest in the property and had deposed that his father was in need of money, his evidence has to be accepted on the issue as to whether there was any legal necessity for the said Sadashiv Pimple to sell the suit property, he being in financial need. The lower appellate Court also considered the fact that even in the sale deed it was stated that the said Sadashiv Pimple and the defendant no.1 to which defendant no.2 was the witness that the said Sadashiv Pimple was in financial difficulty and does require to sell the suit property.

16. It is not in dispute that the said Sadashiv Pimple had sold one more property in respect of which there was no challenge by any of the plaintiffs. The lower appellate Court also considered that the

plaintiffs did not bring any evidence on record though of negative nature to show that they were extending financial help to deceased Sadashiv Pimple and were taking his physical care when he was suffering from paralysis before selling the suit property.

17. A perusal of the impugned order passed by the lower appellate Court indicates that the learned trial Judge also considered the fact that out of Rs.30,000/- received as and by way of consideration, the deceased Sadashiv Pimple had kept an amount of Rs.20,000/- in Bank of Maharashtra and had kept Rs.10,000/- with him which indicated that the deceased was not addicted to vices and sold the property without the legal necessity.

18. It is held that the said Sadashiv Pimple being Karta of the property was entitled to sell the ancestral property for legal necessity.

19. In my view, the lower appellate Court has independently dealt with the evidence led by the parties and has rightly rendered a finding that the suit property was sold by the said Sadashiv Pimple due to legal necessity. It was proved beyond reasonable doubt that the said Sadashiv Pimple was suffering from paralysis for about 5 to 7 months before his death and was not given any financial assistance by the plaintiffs. The plaintiffs were admittedly staying at Mumbai far away from the place of residence of said Sadashiv Pimple. The lower appellate Court, in my view, has rightly negated the findings on the

issue of legal necessity rendered by the learned trial Judge. In my view, the finding of the learned trial Court on the issue of legal necessity was based on no evidence and without any sufficient reasons.

20. In my view, there is no substantial question of law having arisen in the second appeal. Merely because the sale deed was registered not at Pune and at Khed is not sufficient to hold that the transaction was bogus. Be that as it may, the finding of the learned trial Judge that the sale deed was not bogus or fabricated, was not impugned by the plaintiffs by filing any separate appeal and the said finding has thus attained finality.

21. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)