

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.79 of 2014
(Smt. Najabee wd/o Sheikh Ajis and others v. Raju s/o Sandu Jadhav and
others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Rohit Joshi, Advocate for Appellants.
Shri K.P Sadavarte, Advocate for Respondent Nos.1 and 4.

Coram : R.K. Deshpande, J.
Date : 6th June, 2016

1. In Regular Civil Suit No.313 of 1993, the Trial Court passed a decree on 15-9-2006 granting a declaration that the sale-deed dated 5-12-1983 executed by the defendant No.3, the second wife of one Sandu, in favour of the defendant No.4 is not binding on the plaintiff and it has been set aside. The Trial Court also passed a decree for partition and separate possession of the property described in para 1A of the plaint to the extent of remaining 2 acres of land in possession of the defendant No.3. The lower Appellate Court has dismissed Regular Civil Appeal No.120 of 2006 by its judgment and order dated 15-7-2013. The original defendant No.4 is, therefore, before this Court challenging the concurrent findings recorded by both the Courts below.

2. The undisputed factual position is that one Sandu was the owner of the property and he had two wives, the defendant No.1 Smt. Kausallyabai, the first wife, and the defendant No.3 Smt. Yashodabai, the second wife. The plaintiff is the son of Smt. Yashodabai. The owner Sandu died in the year 1982, and the defendant No.3 executed the sale-deed dated 5-12-1983 in favour of the defendant No.4 in respect of 2 acres and 12 R of land. The plaintiff was minor at the time of execution of the sale-deed. The questions before the Courts below were whether the second wife could inherit the property of Sandu, and whether the alienation by the second wife on 5-12-1983 in favour of the defendant No.4 was for legal necessity. The Courts below have recorded the finding that the plaintiff is the legal heir of the deceased Sandu and the defendant No.3. In that capacity, he has right to succeed to the estate of Sandu. Though the Trial Court did not consider the aspect of legal necessity, the lower Appellate Court has recorded the finding that the defendant No.4 sold the property without the permission of the Court and she did not act for the benefit of the minor plaintiff. It is also the finding recorded by the lower Appellate Court that the defendant No.4, the appellant herein, is not a *bona fide* purchaser.

3. In the light of the aforesaid factual position on record, Shri Joshi, the learned counsel appearing for the appellants, has urged that there is no pleading that the marriage between Sandu

and the defendant No.3 was performed prior to 1955 so that the defendant No.3 inherits the share in the property held by Sandu. He does not dispute the position that even if the marriage between Sandu and the defendant No.3 is held to be null and void, the plaintiff would be entitled to inherit the property, though an illegitimate son. In view of this, the question of marriage of Sandu with the defendant No.3 prior to 1955 or subsequent thereto, loses significance.

4. On the aspect of legal necessity, no evidence is brought to my notice led on behalf of the defendant No.4 to establish the legal necessity. Merely because the decree for partition and separate possession was passed by the Trial Court in respect of the remaining share of the property, that would not give the appellant/defendant no.4 locus to challenge such decree for partition and separate possession. Once the sale-deed is set aside, the question of defendant No.3 being bound by her share in the property, would not arise.

5. Thus, no substantial question of law is involved. The second appeal is dismissed.

Judge.