

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

Second Appeal No.53 of 2013
(Dilip s/o Moreshwar Wasamwar v. Amarsingh s/o Gurdipsingh (Dead),
through LRs. Manusingh s/o Amarsingh and others)

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

Shri S.P. Bhandarkar, Advocate for Appellant.
Shri A.R. Patil, Advocate for Respondent Nos.1, 3(a) and 3(b).
Shri Rohit Joshi, Advocate for Respondent Nos.2(a) to 2(d).

Coram : R.K. Deshpande, J.

Date : 13th June, 2016

1. In Special Civil Suit No.322 of 1990, the relief claimed was to set aside the compromise decree passed in Special Civil Suit No.1 of 1972 and further to pass a decree for possession of 1/6th share of the plaintiffs in the suit property. The Trial Court dismissed the said suit on 4-11-1999, and the lower Appellate Court has dismissed Regular Civil Appeal No.954 of 2000 filed by the plaintiffs. Hence, this second appeal is by the original plaintiff No.1, as the plaintiff No.2 has expired.

2. The claim of the plaintiffs was that the suit plot was allotted to Tukaram s/o Zibuji Appa Wasamwar and the documents of lease are placed on record at Exhibits 119 and 120. The house bearing No.231 was constructed over the said plot by Tukaram. The plaintiff No.1-Dilip and the defendant Nos.5 to 7

are the sons of Moreshwar s/o Tukaram Wasamwar. The plaintiff No.2 was the wife of Moreshwar. The defendant Nos.1 to 3 are the purchasers of the suit property from the defendant No.4-Moreshwar by the registered sale-deed dated 12-4-1971 at Exhibit 94. The defendant Nos.1 to 3 filed Civil Suit No.1 of 1972 against the defendant No.4-Moreshwar, which was for possession of the suit property, and the compromise decree was passed on 21-1-1975.

3. The Trial Court recorded the finding that Moreshwar had refused to act as a guardian of the plaintiff No.1, who was then minor, and, therefore, an application seeking permission to act as a guardian was moved by the mother of minor, which was allowed vide Exhibit 45. The sale-deed dated 12-4-1971 is the outcome of the compromise decree executed by the defendant No.4 in favour of the defendant Nos.1 to 3, who were the tenants in the property. Both the Courts below have recorded a concurrent finding of fact that legal necessity for sale of the property has been established. The finding recorded by the Trial Court in para 29 of its judgment and decree, is reproduced below :

“29. ... It is the contention of the learned counsel for plaintiff that the suit property was not sold for legal necessity nor it was sold for the benefit of minor plaintiff

No.1 nor mentioned any reason in the sale-deed. Hence the alleged suit transaction in respect of sale-deed exh.51 is illegal. The plaintiff and his witnesses admitted that father of plaintiff No.1 was the 'Karta' of family and he had taken a loan of Rs.20,000/- from one Tirlokchand. He was also a tenant in the suit premises. It is also admitted that the said loan was taken for the purposes of the marriages of their sisters and brothers. It is also admitted that the financial position of father of plaintiff No.1 was not sound. It is also admitted that his father was not addicted to bad vices. As such, it can be said that the suit property was sold to defendant No.1 to 3 for repayment of loan amount in the benefit of family. Moreover, no specific issue has been framed to that effect. As such, in absence of any cogent and reliable evidence on record, it can be said that the suit property was sold for legal necessity.”

The lower Appellate Court has concurred with the finding recorded by the Trial Court.

4. Shri Bhandarkar, the learned counsel appearing for the appellant/plaintiff, has invited my attention to the provision of Order XXXII, Rule 7 of the Code of Civil Procedure to urge that the requirement contained therein that no next friend or guardian for the suit shall, without the leave of the Court, expressly

recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian. He has relied upon the decision of this Court in the case of *Baliram Sahebrao Tidke and another v. Saheba s/o Patilba Tidke and others*, reported in (2010) 2 Mh.L.J. 117, in which it has been held that the transferor under Section 7 of the Transfer of Property Act, is not competent or authorised to dispose of the transferable property, not of his own, except in the manner prescribed by any law for the time being in force. It has been further held that so far as the property owned and belonging to a minor is concerned, a natural guardian of a Hindu minor is not competent or authorised to dispose of the transferable property of a minor, without the previous permission of the Court. He has also relied upon the decision of the Apex Court in the case of *Divya Dip Singh and others v. Ram Bachan Mishra and others*, reported in (1997) 1 SCC 504, to urge that the disposal of of the property in contravention of Section 8(2) and (3) of the Hindu Minority and Guardianship Act, 1956 is voidable at the instance of the minor. Shri Bhandarkar, the learned counsel, has also invited my attention to the substantial question of law at serial No.(i) to the effect that the lower Appellate Court did not frame any issue on the question of legal necessity, but it has recorded the finding without any pleadings in that behalf in the written statement.

5. Undisputedly, the suit property was the ancestral property in the hands of Moreshwar, the defendant No.4, and it was not the exclusive property of the minor. In view of this, the two decisions cited by the learned counsel for the appellant/plaintiff – one is of this Court and another is of the Apex Court, do not apply to the facts of this case. The defendant No.4 was the Karta of the joint family and had sold the suit property to the defendant Nos.1 to 3 as an outcome of the decree passed in Special Civil Suit No.1 of 1972. It is apparent from the finding of the Trial Court that the sale of suit property was for repayment of loan taken for the benefit of the joint family. The Trial Court recorded the finding that the application for seeking permission to act as a guardian was moved by the mother of the minor, which was allowed by the Court in Special Civil Suit No.1 of 1972, marked as Exhibit 45. It also recorded the finding on the aspect of legal necessity, which has been confirmed by the lower Appellate Court.

6. In view of this, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.