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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.34 OF 2017

1. Narmadabai w/o Rambhau Abuj APPELLANTS
 (Since died through her LRs)

1A. Nilawati Shrimant Shinde
 Age - 64 years, Occ - Agriculture
 R/o Harishchandra Pimpri,
 Taluka - Wadwani, District - Beed

1B. Pandit Rambhau Abuj
 Age - 59 years, Occ - Agriculture
 R/o Rajegaon, Taluka - Majalgaon
 District - Beed

1C. Mandodhari Ramchandra Kachre,
 Age - 52 years, Occ - Agriculture
 R/o Rajegaon, Taluka - Majalgaon
 District - Beed

1D. Kushawarta Chandrakant Yadav
 Age - 46 years, Occ - Agriculture
 R/o Selu, Taluka - Georai,
 District - Beed

2. Champabai Dhondiram Bapmare
 Age - 64 years, Occ - Agriculture
 R/o Mangrul, Taluka - Majalgaon,
 District - Beed

VERSUS

Ramprasad s/o Laxman Ajabe RESPONDENT
 Age - 69 years, Occ - Agriculture
 R/o Surdi Najik, Taluka - Majalgaon
 District - Beed

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 Mr. Ravindra M. Deshmukh, Advocate for the appellants

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th APRIL, 2017

ORAL JUDGMENT :

1. Heard learned advocate for the appellants at quite some length.

2. Learned advocate purports to contend that minor's property had been dealt with by an imposter, executing sale deed and law as it would show that minor's property without due permission from district court is inalienable, taking into account section 8 of the Hindu Minors and Guardianship Act, 1956. Since sale deed had not been preceded by any such permission, the same is void and bad in law. No rights can be said to have accrued to the purchaser. He purports to point out that originally, suit land belonged to Ganpati - father of minor Natha. Ganpati died in 1960 leaving behind his wife - Sugandhabai, present appellant - plaintiff Narmadabai and son Natha. Share of minor Natha had been shown to have been dealt with under a fraud by one Sugandhabai, while real Sugandhabai, wife of Ganpati had never executed sale deed. According to learned advocate, Natha had been cultivating suit land during his lifetime and after death of Natha, suit land had been given for cultivation to the

defendant. However, since 2007-08, defendant denied to give share to the plaintiff and thereupon inspection of revenue entries had been taken and it transpired that name of the defendant had already entered revenue record as owner and possessor of suit property. In the circumstances, regular civil suit No.138 of 2009 ensued seeking declaration that sale deed executed by Sugandhabai dated 7th April, 1966 is brought about by fraud and is not binding on the plaintiff and for perpetual injunction against the defendant. Learned advocate refers to that the defendant had denied averments in the plaint, including the genealogy, contending that the suit is bad for non joinder of parties, as Vithabai, wife of Natha had not been joined in as party defendant despite she being alive. It has been further defence that Natha, during his lifetime, had never challenged sale deed and it was contended that the suit is barred by the law of limitation. It was further referred to by the defendant that regular civil suits No.1 of 1996 and 2 of 1996 were instituted by present plaintiff in respect of inherited property from Ganpati, which did not include the suit property.

3. Learned advocate goes on to submit that in any case, the transaction of 1966 being fraudulent, no title could be said to have been acquired by the defendant in the same. Admittedly,

the property being ancestral in nature, plaintiff has right to said property. The courts hitherto have erroneously dismissed the claim under the suit of the plaintiff and thus he urges to indulge into his request to entertain the second appeal.

4. Perusal of the judgments hitherto reveals that indisputably chronology shows that Ganpati died in 1960, sale deed has been executed by one Sugandhabai in 1966 and since then revenue record uninterruptedly shows defendant to be owner in possession of suit property. Natha died in 1981 and during his lifetime he had never objected to either the sale deed or for that matter corresponding revenue entries. It is the case of the plaintiff - appellant that the property had been given to defendant for cultivation after death of Natha and that around 2007-08 while defendant refused to give plaintiff her share in the income from suit property, movement to inspect revenue record had been made and it transpired that revenue record from long time subsists in the name of defendant.

5. Trial as well as appellate courts, in the circumstances, have found the claim made by the plaintiff to property to be baseless and inconceivable on several grounds. It has been observed by the courts that suit is outside the period of limitation. The

appellate court has more particularly dwelt upon that there is no evidence worth credence given about any fraud being played and imposter has executed sale deed and has further referred to subsisting position of law, so far as minor's share in joint family property is concerned, and appears to have considered that there is not an absolute embargo in dealing with joint family property by manager of the family in case of legal necessity etc. It also appears that Vithabai wife of deceased Natha had been alive while present proceedings came to be instituted by the plaintiff and that she had not been made a party.

6. In the circumstances, taking into account aforesaid position, decisions thus far rendered by two courts do appear to be flawless and do not leave behind any chasm to create an opening for a claim by the plaintiff.

7. Having regard to aforesaid, it does not appear that second appeal carries any substance and the same, as such, stands dismissed.

[SUNIL P. DESHMUKH, J.]