

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

SECOND APPEAL NO. 745 OF 2013

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| 1] | Balaji s/o Kishanrao Mundhe,
Age-51 years, occup.: Agriculture,
R/o Badwani, Tq. Gangakhed,
Dist. Parbhani | |
| 2] | Ashok s/o Ramrao Mundhe,
Age-46 years, occup. : Agril.,
R/o Badwani, Tq. Gangakhed,
Dist. Parbhani | .. Appellants/
Orig. Defendants
No. 1 and 2 |
| | versus | |
| 1] | Ramesh s/o Jagannath Mundhe,
Age-minor, u/g Manikrao Kishanrao
Mundhe, age 66 years, occup. Agril.,
R/o Badwani, Tq. Gangakhed,
Dist. Parbhani | |
| 2] | Mahesh s/o Jagannath Mundhe,
Age - minor, u/g Manikrao Kishanrao
Mundhe, age 66 years, occup. Agril.,
R/o Badwani, Tq. Gangakhed,
Dist. Parbhani | |
| 3] | Jagannath s/o Manikrao Mundhe,
Age : 43 years, occup. Agriculture;
R/o as above | |
| 4] | Muktabai w/o Jagannath Mundhe,
Age-39 years, occup. : Household,
R/o asabove | |
| 5] | The State of Maharashtra,
through District Collector, Parbhani
Dist. Parbhani
Dist. Parbhani | .. Respondents/

Resp. Nos. 1 & 2
original Pltffs.and
Respondents no.
3 to 5 original
Defts. No.3 to 5 |

Mr. Krushna S. Solanke, Advocate h/f Mr. S. J. Salunke, Advocate
for appellants

Mr. S.G. Chapalgaonkar, Advocate for respondents no.1 and 2

CORAM : SUNIL P. DESHMUKH, J.

DATE : 14th February, 2017

ORAL JUDGMENT :

1. Regular civil suit no. 6 of 2001 before the Civil Judge, Senior Division, Gangakhed, was instituted by plaintiffs-respondents no. 1 and 2 then minors, under guardianship of their grand father Manikrao Kishanrao Mundhe, seeking possession, declaration of ownership of land gut no. 211 admeasuring 67 aar situated at village Badwani in taluka Gangakhed, district Parbhani and that the sale deed dated 28-02-2001 executed by respondent no.3-their father to be not binding on them. Appellants are defendants no. 1 and 2 in said proceedings. (Parties hereinafter are referred to by their status in suit.)

2. Plaintiffs claimed ownership to suit property through their grand father Manikrao who originally owned the same. The grand father in partition had allotted suit land to defendant no. 3 - father of the plaintiffs and subsequently, it appears, defendant no. 3 had transferred suit land in favour of minor plaintiffs and mutation entry bearing no. 479 in respect of the same came to be recorded in the names of plaintiffs (then minors) in 1999. Revenue record thenceforth continued to

reflect the names of plaintiffs. Around February, 2001, defendant no. 3 - father of minor plaintiffs, purported to sell suit land to present defendant no. 1 along with defendant no. 2 (appellant no. 2 herein) and purportedly had put him in possession of the same.

3. Though defendants no. 1 and 2 and other defendants were served in suit, they had not submitted their written statement. The suit went *ex-parte* against defendant no. 5, the State - respondent no. 5 herein.

4. According to defendants no. 1 and 2, defendant no. 1 is a bonafide purchaser for value without notice and is in possession of suit land under registered sale deed. No proper opportunity had come his way to file written statement and in the circumstances, the decision came to be rendered by the trial court decreeing the suit under judgment and order dated 22-06-2012 while rest of the parties to the suit were in collusion.

5. In regular civil appeal no.21 of 2012 by defendants no. 1 and 2 against aforesaid judgment and decree of the trial court, remand of the matter had been requested for. The appellate court accordingly had framed point for consideration as to whether the decree of the trial court can be said to be perverse and matter deserves to be remanded and had recorded negative

finding on the same. The appellate court considered that the defendants no. 1 and 2 were duly served in suit. They had appeared but had not filed written statement whereas, the plaintiffs in support of their pleadings had produced affidavits of their guardian Manikrao Mundhe, witness Dinkar Mundhe and written arguments and the suit was decreed accordingly under the judgment and decree dated 22-06-2012 by the trial court.

6. The appellate court seems to have considered that despite ample opportunity, defendants had failed to file written statement and that several applications for adjournments had been filed and had been decided after hearing the parties. Defendants no. 1 and 2 had not even taken pains to cross examine the witnesses examined on behalf of the plaintiffs. Further, as the learned counsel for defendants no. 1 and 2 had tendered various applications, the defendants thus were considered to be aware of stages in the suit. The appellate court disbelieved the contention of defendants no. 1 and 2 (appellants) them being away from the village for labour work in a sugar-factory for want of particulars of the sugar-factory and for want of satisfactory evidence in that respect. The appellate court did not find substance in the plea taken by appellants. The appellate court has also adverted to that the suit was filed by minors, challenging sale deed executed by their parents

without taking into account the title, ownership and possession over suit land. The appellate court considered that after taking into account various aspects, the trial court had decreed the suit and the evidence and pleadings of the plaintiffs went unchallenged and as such, the trial court's decree would seldom be liable to be faulted with.

7. While this is being observed by the appellate court, it appears that, as is submitted on behalf of the appellants, an aspect that may have to be referred to which may emerge from the plaint pleadings is, as to whether the suit was maintainable during minority of the plaintiffs.

8. There appears to be a decision by learned single judge of this court in the case of *Narayan vs. Udaykumar*, reported in 1993 (2) *Mh.L. J.* 1653 wherein it has been observed in paragraph 7 thus;

" 7. For consideration of question no.2, sub-sections (2) and (3) of section 8 are relevant. Sale transaction without permission of the Court is not void ab initio, but is voidable at the option of the minor or any person claiming under him. Scheme contemplates challenge only after the minor attains majority and not during his minority. After all natural guardian has dealt with the property and under section 11 of the Act de facto guardian's right to dispose of or deal with the property of a Hindu minor is taken away and the transaction by him is treated to be void ab initio. Any action or result therefrom during minority can on certain grounds be again challenged by a minor on attaining majority and person bona fide entering into transaction cannot be subjected to endless litigation. Many times transactions are challenged with the blessings and

inspiration of the natural guardian with a view to derive advantage arising out of several situations including fluctuations in the market price. Hence, I hold that transaction would not have been challenged on behalf of minor Babulal. "

9. As such, it appears, initiation of the proceedings would itself be vulnerable to attack on the ground of maintainability the decision being so rendered.

10. In the circumstances, the question that may arise for consideration is as to whether having regard to the decision being relied on i.e. in the case of *Narayan vs. Udaykumar (supra)*, the matter is liable for remand for prosecution afresh.

11. Taking overall pragmatic view and to do justice to either side, it would be expedient that the matter would be remanded to the trial court since the plaintiffs are stated to have attained majority from the stage of submission of written statement of the appellants and the suit be proceeded with as expeditiously as possible.

12. Accordingly, the matter stands remanded to the trial court for further prosecution from the stage of filing of written statement by appellants and the same be proceeded with as expeditiously as possible and be disposed of within a period of nine months from the date of receipt of writ of this order. Parties to the suit shall cause appearance before the trial court on

04-04-2017 obviating any notice for appearance by the trial court. In the circumstances, the inconvenience being caused to the plaintiffs shall be met with by payment of costs of Rs.50,000/-. The amount of Rs.50,000/- deposited in this court towards costs be allowed to be withdrawn by plaintiffs. It is further made clear that the appellants are under obligation to file written statement by 30-04-2017.

13. With aforesaid, second appeal stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

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