

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 460 OF 2017

along with

CIVIL APPLICATION NO. 507 OF 2017

Sou. Minakshi Ravindra Zadbuke & Ors.

... Appellants

vs.

Ravindra Baburao Zadbuke and others

... Respondents

Mr. S.P. Raje Pandare, instructed by Mr. J.S. Yadav for the Appellants.

Mr. P.S. Dani, Senior Advocate, along with Mr. Ajay Joshi, for Respondent Nos. 2 to 4.

CORAM: S.J. KATHAWALLA, J.

DATE: 29th JUNE, 2017

P.C.

1. Regular Civil Suit No. 8/2012 (Old Spl. Civil Suit No. 421 of 2002) was filed by the Appellants (Original Plaintiff Nos. 1 to 4) before the Learned Civil Judge, Senior Division, Pandharpur ('the Trial Court') wherein the relief sought was that the suit properties be partitioned equally between the Plaintiffs and the Defendant No. 1 so that each one of them would get 1/5th share in the suit properties. The suit filed by the Plaintiffs was, by a judgment and decree dated 25th April, 2013, dismissed by the Trial Court. Being aggrieved, the Appellants/Original Plaintiffs impugned the Judgment and Decree of the Trial Court dated 25th April, 2013, by filing an Appeal, being R.C.A. No. 119 of 2013,

before the Learned Ad-Hoc District Judge-2, Pandharpur ('Appellate Court') which too was dismissed with costs, vide a detailed Judgment and Decree dated 23rd December, 2016. The Appellants/Original Plaintiffs once again being aggrieved therefrom have preferred the above Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

2. For the sake of convenience, the Appellants and the Respondents are referred to hereinafter as per their original status, i.e. as Plaintiffs and Defendants respectively.

3. Plaintiff No. 1 - Minakshi Ravindra Zadbuke and her three children filed R.C.S. No. 8 of 2012 (Old Special Civil Suit No. 421/2002) against Defendant No. 1, who is her husband, and Defendant Nos. 2 to 6, who are third parties. In the said suit, the Plaintiffs contended that the Defendant No. 1 is the Karta of their joint family; the Defendant No. 1 was in possession of all the properties owned by the Hindu Undivided Family in which the Plaintiffs were having undivided interest to the extent of 1/5th share each; the suit properties are ancestral properties of Plaintiffs and Defendant No.1; the suit properties are not partitioned between Plaintiffs and Defendant No.1; the joint family of the Plaintiffs was having a good income from the suit properties; the Plaintiffs had no reason to obtain loans, however in view of several vices of Defendant No.1 like drinking, gambling and enjoying adulterous life, he started disposing of the properties of the joint family to satisfy his vices; he had taken loans from

Defendants who are moneylenders, and in return transferred the suit property in their favour. In fact the land bearing Gat No. 316/1/B was transferred by a sale deed in favour of Defendant No.2 without any consideration and without giving possession of the same to Defendant No.2; Defendant No. 1 has therefore without any legal necessity transferred the ancestral land and shop premises (suit premises) under various sale deeds to Respondent Nos. 2 to 6, without obtaining the consent of the Plaintiff No.1.

4. Defendant No. 1 who is the husband of Plaintiff No. 1 and the father of Plaintiff Nos. 2, 3 and 4 has not denied or disputed any of the allegations made in the Plaint.

5. Defendant Nos. 2 to 6 have contested the suit. They have denied and disputed all the allegations made by the Plaintiffs. They have set out reasons justifying that the sale of the suit properties by Defendant No. 1 was for legal necessity. According to them, Plaintiff No. 1 was aware about the sale of the suit properties. In fact, one of the properties which stood in the name of the Plaintiffs and another property which stood in the name of Plaintiff No. 1 and the Defendant No. 1 were by consent disposed of by the Plaintiff No. 1 (wife) and Defendant No. 1 (husband) by Sale Agreements dated 13th October, 2000 and 13th November, 2000, that is during the very same period when the suit properties were sold by Defendant No. 1 to the other Defendants. Defendant No. 2, inter alia, submitted that he has already sold the land bearing Gat No.

316/1/B which he had purchased from Defendant No. 1 to Defendant No.3 and has disputed the contention of the Plaintiff that possession of the suit land bearing Gat No. 316/1/B continues to be with the Plaintiffs and that they are cultivating the same.

6. The Learned Trial Judge framed issues in the suit and rejected the contention of the Defendants that the suit was bad for non-joinder of necessary parties; that the suit was filed beyond the period of limitation; and that the suit is not correctly valued. However, the Learned Trial Judge after appreciating the oral and documentary evidence held, that sale deeds have been executed by Defendant No. 1 in favour of the other Defendants for legal necessity and to take care of the needs of the family; the sale deeds executed are therefore legal and binding on the Plaintiffs; the Plaintiffs have not established the possession of the suit land/property as alleged; that the Plaintiffs are not entitled to partition of the suit property.

7. The Trial Court has, inter alia, referred to the cross-examination of Plaintiff No.1, who is the wife of Defendant No.1, and has recorded that Plaintiff No. 1 has admitted in her cross-examination that she and her husband are residing together along with their children, she visited the Advocate along with her husband i.e. Defendant No. 1. She has admitted that her Advocate informed her in the presence of Defendant No. 1 that her husband will have to be joined as party Defendant No. 1 to the suit. She has also admitted that it is her husband

who has given her all the necessary documents to file the suit and she attends the Court proceedings and returns back along with her husband. The Trial Court therefore held that the suit filed by the Plaintiff No. 1 wife is in collusion with her husband i.e. the Defendant No.1 and all the allegations including the very serious allegations about the Defendant indulging in drinking, gambling and adulterous relationship made by the wife -- Plaintiff No. 1 against her husband -- Defendant No. 1, are made in collusion with each other. The Trial Court also held that Defendant No. 1 has put the Plaintiff No. 1 in the forefront with the intention of proving that the sale deeds executed by him in favour of the Defendants are illegal and void. The suit is therefore filed by them only to harass Defendant Nos. 2 to 6 and to extract more money from them.

8. Since the Plaintiff laid great stress on the fact that the amount shown in the sale deed executed between Defendant Nos. 2 and 3 is much less than the amount paid by Defendant No. 2 to Defendant No. 1 and Defendant No. 3 not having entered the witness box, the Trial Court in its Judgment pointed out that apart from the fact that Defendant Nos. 2 and 3 submitting that they had in the sale deed shown the consideration on the basis of the Ready Reckoner and Defendant No. 3 had paid additional amounts to Defendant No.2, in the absence of any privity of contract with regard to the said property between Defendant No. 1 and Defendant No.3, Plaintiff No. 1 or Defendant No. 1 cannot object to the rate at which the Defendant No. 2 disposed of its property in favour

of Defendant No.3. The Trial Court has also observed that Defendant No. 2 having once purchased the property from Defendant No.1 may proceed to give the property to Defendant No. 3 or to any other person absolutely free. The Trial Court therefore after appreciating the oral and documentary evidence on record dismissed the suit with costs.

9. As stated earlier, being aggrieved by the said Judgment and Decree passed by the Trial Court, the Plaintiffs filed Appeal being Regular Civil Appeal No. 119 of 2013 before the Ad-hoc District Judge, Pandharpur at Pandharpur. The Appellate Court has by its detailed Judgment, after appreciating the oral and documentary evidence filed by the parties, dealt with the contentions of the parties and has dismissed the Appeal with costs.

10. In the Second Appeal, the Advocate for the Appellant has raised the same grounds viz. that the suit property was not sold by Defendant No. 1 for any legal necessity but was sold to satisfy the vices of Defendant No. 1 and that the same is established by various factors like the appellants being in possession of the suit land bearing Gat No.316/1/B, Defendant No. 2 selling the suit property to Defendant No. 3 by an amount much less than what he had paid to Defendant No.1. Defendant No. 2 not being present at the time of execution of the sale deed, etc. In my view, the trial Court as well as the Appellate Court have, after appreciating the oral as well as the documentary evidence led/placed before the

Courts by the parties, have by their detailed reasoned judgments, given concurrent findings on facts namely that the suit properties were sold by Defendant No. 1 for legal necessity and that the suit is filed by the Plaintiffs in collusion with Defendant No. 1. Therefore, in my view, no substantial question of law arises in the matter and the above Second Appeal is dismissed.

(S.J. KATHAWALLA, J.)