

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

Civil Application (CAO) No.713 of 2011

In

Misc. Civil Application Stamp No.5249 of 2011

In

Rej. Second Appeal No.158 of 2011

(Second Appeal Stamp No.400 of 2011)

(Sheshrao s/o Gangaram Raut (Dead), Shri Chandreshwar s/o Sheshrao
Raut and others v. Shri Daulat s/o Ganpati Kokate (Dead), Shri Vasant Rao
s/o Daulat Kokate 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.G. Shukla, Advocate for Applicants.

Coram : R.K. Deshpande, J.

Date : 7th February, 2017

1. One Punaji was the owner of the suit property. He died in the year 1935, leaving behind him two wives, the first being Manubai, and the second being Bhulabai; and a daughter Radhabai, born from Manubai. The first wife Manubai died on 14-8-1945. Bhulabai was in possession of the suit property and she executed two different sale-deeds, the first is dated 24-5-1947 in favour of Banabai, and the another is dated 22-7-1949 in favour of the appellant-defendant. Thus, the entire property, i.e. the land admeasuring 10.46 acres, was sold by Bhulabai. Radhabai, the plaintiff No.2, who is the daughter of Manubai, sold 5.23 acres of land in favour of the plaintiff No.1-Daulat by

the registered sale-deed dated 23-11-1947.

2. Radhabai died on 6-9-1967 and the suit in question, which was earlier filed in the Court of Civil Judge, Junior Division, at Katol on 7-1-1968 and was subsequently transferred in the Court at Nagpur and re-registered as Special Civil Suit No.169 of 1971 for possession of the property from the defendants, who claimed to be the owners on the basis of the sale-deed registered on 22-7-1949.

3. Both the Courts below have recorded the finding that Bhulabai had no right to alienate the suit land to the defendants by the registered sale-deed dated 22-7-1949. It is also held that the plaintiff No.2-Radhabai, the daughter of Manubai and Punaji, succeeds to the estate after the death of Bhulabai and, therefore, the plaintiff No.1-Daulat, being the purchaser of the suit property under the registered sale-deed dated 23-11-1947 from Radhabai, was only entitled to a decree for possession of the suit property. The Courts below have also rejected a plea raised by the defendants that the suit was barred by the law of limitation, as prescribed under Article 65 of the Limitation Act. The Courts below hold that the right of the plaintiffs to seek possession of the suit property arose only upon the death of Bhulabai on 6-9-1967 and the suit filed on 7-1-1968 was, therefore, within a period of limitation.

4. The question of law urged by Shri Shukla, the learned counsel for the applicants, is that both the Courts below have committed an error of law in holding that Bhulabai was not competent to sell the suit property by the registered sale-deed dated 22-7-1949. He has relied upon the provision of Section 43 of the Transfer of Property Act, 1882 to urge that though Bhulabai was not authorized to transfer the property when the sale-deed was executed, she acquired interest subsequently upon coming into force of the Hindu Succession Act, 1956 and, therefore, in terms of Section 43 of the Transfer of Property Act, the defendants were entitled to protect the possession. It is his further submission that the sale-deed was executed on 22-7-1949 and the suit filed on 7-1-68 neither did challenge the sale-deed nor did claim the relief of declaration of title and hence the suit should have been dismissed on that ground only. The reliance is placed upon the decision of the Apex Court in the case of *Anathula Sudhakar v. P. Buchi Reddy (Dead) by L.Rs and Ors.*, reported in *AIR 2008 SC 2033*.

5. Both the Courts below have relied upon the decision of this Court, rendered in First Appeal No.166 of 1954, placed on record at Exhibit 87 to hold that Bhulabai could not alienate the property even assuming that she was the absolute owner of her share, in which event Manubai was the absolute owner of her

share in the northern portion of the property. It is also held in the said judgment that Bhulabai was the limited owner of the property and she could not sale it except for legal necessity.

6. The transactions in question are prior to coming into force of the Hindu Succession Act, 1956. Punaji, the owner of the property, died in the year 1935 and was survived by two widows – Manubai and Bhulabai, and a daughter, the plaintiff No.2- Radhabai, from Manubai. When the property was sold by Bhulabai on 22-7-1949, it cannot be said that she was the absolute owner of it having right to dispose of the property. On the date when the Hindu Succession Act came into force, the ownership and possession of the property were already parted with by Bhulabai and the defendants were in possession on the basis of the registered sale-deed dated 22-7-1949. In such a situation, it cannot be said that Bhulabai was in possession of the suit property on the date of coming into force of the Hindu Succession Act, and the provision of Section 14(1) therein was not at all attracted. Bhulabai had also lost right to possess the property in view of the execution of the registered sale-deed dated 22-7-1949. Thus, the competency of Bhulabai to execute the sale-deed on 22-7-1949 is not established.

7. If the challenge to the execution of the sale-deed is on the ground that it was void for want of competency and the

question is concerned by the Courts below, failure to make a prayer for challenging such sale-deed would not be of any consequence. The cause of action for the plaintiffs to file a suit for possession of the suit property arose upon the death of Bhulabai on 6-9-1967 and hence, the suit filed on 7-1-1968 was within a period of limitation.

8. The second appeal does not given rise to any substantial question of law. The same is dismissed.

9. In view of the dismissal of the second appeal, the civil applications for condonation of delay, setting aside abatement and bringing legal representatives of the deceased appellant and respondent do not survive, and the same stand disposed of.

Judge.

Lanjewar