

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

SECOND APPEAL NO.246 OF 2016

SMT. BHIMABAI WD/O URKUDA RAMTEKE

VS

SMT. RAJWANTI W/O GOPICHAND GHODESWAR & 2 OTHERS

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

Court's or Judge's orders

Ms. Pinky Jagtap Advocate h/f Shri Nitin Lalwani, Advocate for the
appellant.
Shri Masood Shareef, Advocate for the respondent no.1.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 19, 2017.

The appellant is the original plaintiff who had filed suit for declaration that the sale deed dated 31-1-2005 executed by the defendant nos.1 to 3 in favour of the defendant no.4 be declared illegal and not binding on her share. It is the case of the plaintiff that her father Kisan was survived by his widow and two more sisters. According to the plaintiff, the defendant nos.1 to 3 without her consent sold the suit property to the defendant no.4. Hence, suit came to be filed with an alternate prayer that the plaintiff had 1/4th share in the suit property. The defendant nos.2 & 3 filed

their written statement and took the stand that initially the plaintiff had consented to sell the suit property but had subsequently refused to do so. While executing the sale deed portion admeasuring 400 sq. ft. to the share of the plaintiff was kept aside and remaining portion of 1200 sq. ft. was sold to the defendant no.4. According to the defendant no.4 he had purchased the aforesaid property for valuable consideration.

The trial Court recorded a finding that the sale deed executed in favour of the defendant no.4 was illegal and did not confer any right on him. Further decree for partition was passed. In the appeal preferred by the defendant no.4, the appellate Court partly modified the decree. It held that the plaintiff had 1/4th share in the suit property and that the sale deed to that extent was not binding on her. Being aggrieved, the plaintiff has filed this appeal.

It is submitted on behalf of the appellant that the sale deed in question was executed without obtaining consent of the plaintiff and there was no legal necessity for doing so. It was submitted that the plaintiff had a right in the suit property and therefore without her consent the sale deed could not have been executed. Reliance was place on the judgment of the Hon'ble Supreme Court in *Sunil Kumar and another v. Ram Parkash and others* AIR 1988 SC 576 to urge

that if the alienation was unjustified, the same could be challenged.

The decree is supported by the learned Counsel for the defendant no.4. It is submitted that in the sale deed at Exhibit-54, the share of the plaintiff has been demarcated and kept aside. The property sold is only about 1200 sq. ft. which is excluding the share of the plaintiff. It is submitted that the defendant no.1 was aged about 80 years and to meet her medical expenses, the sale deed was executed.

Heard learned Counsel for the parties and perused the impugned judgments. The relationship between the plaintiff and the defendant nos.1 to 3 is not in dispute. After the death of Kisan, each party had 1/4th share in the property left by Kisan. While selling the suit property on 27-1-2005 area admeasuring about 400 sq. feet by letters A,B,F,E in the sale deed at Exhibit 54 was kept side as the plaintiff's share. The appellate Court in para 18 of its judgment after appreciation of evidence found that the property was sold to take care of the medical treatment of the defendant no.1. It was then found that keeping 400 sq. feet area aside was an equitable act after which the sale deed was executed. In the aforesaid facts, therefore, the decision relied upon by the learned Counsel for the appellant does not support her case. The decree as passed in fact grants the alternate prayer made

by the plaintiff.

Hence, I do not find that the appeal gives any rise to substantial question of law. The appeal is, therefore, dismissed. No costs.

JUDGE

/MULEY/