

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

SECOND APPEAL NO.485 OF 2016

SHRI VINOD S/O UTTAMRAO PAWDE AND OTHERS
VS
CHANDBI W/O SHEIKH RAMJAN JATTAWALE AND ANOTHER

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

Court's or Judge's orders

Shri C. S. Kaptan, Senior Advocate with Shri A. R. Deshpande, Advocate
for the appellants.
Shri S. A. Mohta, Advocate for respondent No.1 & 2.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 16, 2017.

Admit on the following substantial question of law:

Whether the sale deeds executed in favour of the appellants were liable to be held to be legal and valid in so far as the share of defendant Nos.1, 2 & 4 who had executed the same or whether the entire sale deeds were liable to be declared null and void?

Shri S. A. Mohta, learned Counsel for the original plaintiffs – respondent Nos.1 & 2 waives notice.

With the consent of the learned Counsel for the parties, the appeal is taken up for final disposal.

One Sk. Kasam was the owner of field Survey No.130/1. He expired in the year 1996 leaving behind various legal heirs. The defendant Nos.5 to 7 purchased 9 acres 17 R land from the aforesaid property from defendant Nos.1,2 & 4. The plaintiffs who were the daughters of Sk.

Kasam filed suit for declaration that the aforesaid sale deeds were null and void and further prayed for relief for partition with separate possession.

The trial Court after considering the evidence on record held that the sale deeds dated 21-4-2008 were null and void and that the plaintiffs were entitled for a share in the same along with defendant No.3. The suit accordingly came to be decreed and the appeal filed by the present appellants was also dismissed.

Shri C. S. Kaptan, learned Senior Counsel for the appellants submitted that both the Courts erred in holding the sale deeds dated 21-4-2008 to be null and void. According to him, the defendant Nos.1,2 & 4 being co-sharers and the vendors of the appellants, the sale deeds ought to have been maintained against them. He submitted that at the highest decree could have been maintained only in so far as the original plaintiff and defendant No.3 are concerned. He further submitted that defendant nos.1,2 & 4 did not challenge the decree passed by the trial Court and, therefore, by modifying the said decree, the interest of the appellants deserves to be protected. He referred to the provisions of Section 44 of the Transfer of Property Act, 1882 in that regard.

Shri S. A. Mohta, learned Counsel for the respondent Nos.1 and 2 submitted that the plaintiffs having proved their share before the trial Court, they were entitled to their respective shares from the suit property. The plaintiffs were not concerned with the shares of the defendant nos.1, 2 & 4. He, therefore, submitted that to that extent, the decree passed by the trial Court and maintained by the appellate Court does not deserve to be interfered.

It is not in dispute that the suit property was

originally owned by Sk. Kasam. After his death, some of his legal heirs being defendant Nos.1,2 & 4 executed three sale deeds in favour of the present appellants. The trial Court was legally correct in holding that these sale deeds would not bind the shares of the plaintiff. Therefore, it was necessary for the trial Court to have set aside those sale deeds only in so far as the shares of the plaintiffs and the defendant no.3 were concerned. In terms of Section 44 of the Transfer of Property Act, these sale deeds were binding to the extent of the share of the Vendors who were defendant nos.1,2 & 4. The appellate Court did not consider this aspect and maintained the decree passed by the trial Court. To that extent the decree is liable to be modified.

The substantial question of law as framed is answered by holding that both the Courts ought to have held that the sale deeds dated 21-4-2008 were null and void only to the extent of the shares of the plaintiff and defendant no.3. These sale deeds were valid in so far as the shares of defendant nos.1, 2 and 4 were concerned.

In view of aforesaid, the appeal is partly allowed.

It is held that the sale deeds dated 21-4-2008 executed by defendant nos.1, 2 and 4 would not bind the shares of the plaintiffs and defendant no.3. The sale deeds are treated as valid in so far as the shares of defendant nos.1, 2 and 4 are concerned.

Decree be drawn up accordingly. There would be no order as to costs.

JUDGE