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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.108/2018
WITH
CIVIL APPLICATION NO.1736/2018

- 1] Buntty @ Gajendrasinha s/o Prakashsing Rajput, age 32 yrs., occu.business, r/o Hiralal Chowk, Rajput Galli, Beed. Tq. & Dist.Beed.
- 2] Lalabai w/o Prakashsing Rajput, age 52 yrs., occu.household, r/o Hiralal Chowk, Rajput Galli, Beed. Tq. & Dist.Beed.
- 3] Ku.Punam d/o Prakashsing Rajput, age 28 yrs., Occu.education, r/o Hiralal Chowk, Rajput Galli, Beed. Tq. & Dist.Beed.
- 4] Soni w/o Vishal Suryawanshi, age 33 yrs., occu.household, r/o Sector 19, Kharghar, Mumbai.

...Appellants..
(Org.defendants)

Versus

Dhondabai w/o Charansing Rajput,
age 77 yrs., occu.household,
r/o Hiralal Chowk, Rajput Galli,
Beed. Tq. & Dist.Beed.

...Respondent..
(Org.plaintiff)

....

Shri H.V. Tungar, Advocate for appellants.
Shri N.L. Jadhav, Advocate for respondent.

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CORAM: V.L. ACHLIYA, J.

DATE: 26.09.2018

PER COURT :

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1] Being aggrieved by the concurrent decisions rendered by the Courts below, the appellants – original defendants have preferred this second appeal.

2] Heard learned counsel for the appellants – org.defendants and the respondent – org.plaintiff. Perused the judgment of the trial Court, the appellate Court as well as copies of plaint, written statement and evidence adduced in the case.

3] Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of this appeal. The respondent – org.plaintiff had filed civil suit bearing Regular Civil Suit No.220/2009 seeking decree for declaration of ownership, partition and separate possession in respect of house property bearing house Nos.3-9-80 and 3-9-82 located at Beed and more particularly described in the plaint. The plaintiff has approached with a case that in a compromise decree passed in a suit filed by her son Prakashsing, house property bearing No.3-9-82 came to the share of her deceased husband Chandansing and deceased husband of appellant no.2. Upon the death of her husband, the plaintiff became owner of said house and entitled for

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possession of said property.

4] The plaintiff has further claimed the decree of partition and separate possession in respect of house property No.3-9-80 (hereinafter referred to as the said property) with contention that said property was purchased vide registered sale deed dated 6.8.2004 executed jointly in the name of the plaintiff and her deceased son Prakashsing. It was purchased out of amount received by her husband as pensionary benefits. It was purchased in the name of herself as well as deceased Prakashsing as the plaintiff and her husband as well as Prakashsing were residing together. Her husband died in the year 2008. Prakashsing, the deceased husband of the appellant no.2, died in the year 2009. After the death of Prakashsing, the appellants had ill-treated her and driven out from said house. She sought declaration to declare her as absolute owner of house property bearing No.3-9-82 and decree of partition and possession to the extent of half share in house property bearing No.3-9-80.

5] The suit claim of the plaintiff was resisted by the appellants – defendants. They have denied the case of the plaintiff as to declaration of ownership of house

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property No.3-9-82 as well as half share in house property No.3-9-80. According to defendants, the house property bearing No.3-9-82 came to the share of deceased Prakashsing i.e. the husband of the appellant no.2 and father of appellant nos.1 and 3 in terms of compromise decree passed by the Court in the partition suit filed by Ashoksing, the son of plaintiff. So far as house property bearing No.3-9-80, the defendants have claimed that the said property being self-acquired property of Prakashsing and plaintiff is not entitled to claim share in said property. According to appellants – defendants, the husband of the plaintiff no.2 retired in the year 1987-88. He was not entitled to receive pensionary benefits. He had no income of his own to purchase property in his own name as well as in the name of the plaintiff. According to defendants, the house property No.3-9-80 was purchased out of sole earning of Prakashsing. Only out of love and affection, the name of plaintiff was recorded in the sale deed alongwith Prakashsing as joint purchaser of said house property. In nut-shell, the defendants have claimed that house property bearing No.3-9-80 was exclusively owned by

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Prakashsing and the plaintiff has no right and interest to claim said property. In order to prove her case, the plaintiff has stepped into the witness box and deposed as per her case. On behalf of the defendants, the defendant no.1 stepped into the witness box. On conclusion of the trial, the trial Court has partly decreed the suit. The suit came to be decreed partly holding that the plaintiff is entitled to half share in the suit property bearing house No.3-9-80 and accordingly the trial Court passed the decree for partition and separate possession of said property. Being aggrieved, the appellants preferred appeal before the District Court, Beed, vide Regular Civil Appeal No.121/2011. By the judgment and decree dated 28.9.2017, the appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal. Being aggrieved, the appellants have preferred this appeal.

6] Mr.H.V. Tungar, learned counsel for the appellants, assailed the reasons and findings recorded by the Courts below with a contention that both the Courts below have failed to take into account that the plaintiff has not specifically pleaded that the suit property i.e.

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house No.3-9-80 was purchased out of sale consideration paid in part or full by her. On the contrary, the defendants have specifically pleaded that the said property was purchased by deceased Prakashsing by paying the entire consideration amount out of his own earnings and only out of love and affection towards the plaintiff as a mother, the name of the plaintiff has been shown as a co-owner of the property. It is contended that mere existence of the name of the plaintiff in the sale deed, who was then residing with the deceased Prakashsing would not make her joint owner of the property and entitle to claim one half share in said house property. It is contended that neither any specific plea raised nor any evidence adduced to accept that the said property was purchased out of funds contributed by the plaintiff. In this background, the learned counsel submits that the plaintiff has failed to discharge the burden to prove that she is joint owner of the property and entitled to half share in said house property. In absence of burden being discharged, no onus shifts upon the defendants to prove that the property was purchased by deceased Prakashsing out of his own earnings. By referring to

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Section 45 of the Transfer of Property Act, the learned counsel submits that in absence of specific pleading and evidence on the part of the plaintiff, the Courts below erred in holding that the plaintiff is entitled to half share in the said property. In support of his submission, the learned counsel has referred and relied upon the decision in the case of *Rajeshwari v. Balchand Jain* (M.P. Law Journal 2001 (1), 505). The learned counsel submits that though there are concurrent decisions rendered by the Courts below, the appeal filed by the appellants raises following substantial questions of law :-

- i] In absence of specific pleadings by the plaintiff, is trial Court justified in passing the decree in favour of the plaintiff ?
- ii] Whether the benefit u/s 45 of the Transfer of Property Act can be extended to the plaintiff when there is no evidence that the plaintiff has contributed for purchase of the property ?
- iii] In absence of burden being discharged by the plaintiff, whether the same has been shifted upon the defendants ?

7] On the other hand, the learned counsel appearing for the respondent has opposed the admission of the

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appeal with a contention that there are concurrent decisions rendered by the Courts below and absolutely no substantial question of law has been raised in the appeal filed by appellants. By referring to the pleadings and evidence, the learned counsel submits that there is specific pleading as well as evidence adduced by plaintiff that the said property was purchased out of consideration paid by her husband. It is contended that the sale deed reflects the name of the plaintiff as well as the deceased Prakashsing as joint owners of said property. The terms of the sale deed are clear and unambiguous and no oral evidence can be adduced contrary to the terms of the document i.e. sale deed. In support of the submission, the learned counsel has referred and relied upon the decision of this Court in the case of *Suman Vishnu Pathak & others v. Usha Prabhakar Rao Koparkar & others* [(2013 (5) Bom.C.R., 210)].

8] In order to appreciate the submissions advanced, I have perused the plaint, written statement, the judgments and decrees passed by the Courts below as well as the evidence adduced by the parties. On due consideration of rival submissions, I am of the view that

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no case is made out to entertain the second appeal. There are concurrent decisions rendered by the Courts below in favour of the respondent. Perusal of copy of the plaint reveals that the plaintiff has specifically pleaded in paragraph no.6 that the house property bearing No.3-9-80 was purchased from its owner Ramansing Nandaramsing Rajput in the name of herself and her son Prakashsing for a consideration of Rs.2,00,000/- and for that purpose, the amount received by her husband as pensionary benefits was paid as a consideration. The plaintiff had stepped into witness box and deposed as per facts pleaded in plaint. In the cross-examination of the plaintiff, nothing has been elicited so as to find favour to case of defendants. She has denied the suggestion put forth to her in cross-examination that no pension was payable to her husband as well as herself. She has categorically stated that even after the death of her husband, she is receiving pension. Only for the reason that she admitted that her husband retired from service in the year 1986 itself not sufficient to draw inference that no contribution was paid on her part towards the purchase of property in the name of the plaintiff as

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well as in the name of Prakashsing and the property was purchased out of entire consideration paid by deceased Prakashsing. There are consistent findings on facts recorded by the Courts below on this issue. The fact is not in dispute that father of the appellant nos.1,3 and 4 and husband of the appellant no.2 as well as the plaintiff and her husband Chandansing were residing together till the death of Prakashsing, who died in the year 2008. The property in question was purchased prior to that i.e. registered sale deed dated 6.8.2004. The fact is also not in dispute that the husband of the plaintiff no.2 died in the year 2008 and Prakashsing died somewhere in the year 2009. Thus, at the time of execution of sale deed in the year 2004, the plaintiff, her husband and deceased Prakashsing were residing together. There is no evidence adduced by the defendants to prove that the entire sale consideration for purchase of said property was paid by Prakashsing and only out of love and affection, the name of plaintiff was recorded in the sale deed. Since the plaintiff and the defendants have stepped into the witness box and adduced evidence as per their respective case, the question of discharge of

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burden and shifting onus is of no consequence. There is oath against oath.

9] In the light of over-all pleadings of the parties and the evidence in the case, the Courts below have held that the plaintiff is entitled to half share in the property. There is no perversity in any of the reasons and findings recorded by the Courts below. In my view, the appeal raises no substantial questions of law to be decided in this appeal. In that view, I am not inclined to entertain the appeal. Accordingly, the appeal is dismissed.

10] In view of disposal of appeal itself, Civil Application No.1736/20178 stands disposed of. There shall be no order as to costs.

(V.L. ACHLIYA, J.)