

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.471 of 2001**

Vimal Raghunath Kare ...

Appellant
(Orig Defendant)

vs

1. Sunil Nanasaheb Raut
2. Nitin Chandrashekhar Bhand
3. Ajay Chandrashekhar Bhand

.. Respondents
(Orig.Plaintiffs)

Mr.S.S.Kulkarni I.b Mr.Devidas Jadhav for Appellant
Mr.Drupad S.Patil for Respondent nos.1 to 3.

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CORAM: A.M.DHAVAL, J

DATE: 11TH OCTOBER 2018

P.C.

1. This is The defendant's appeal.

2. The respondents had filed Regular Civil Suit No.438 of 1982 against the appellant herein. He claimed that he was owner of agricultural land of 61 ares at block nos. 639 (pt), with some right in the well and one structure at House No.932. He claimed that the properties were belonging to his grand father-Maruti as self-acquired property. Maruti's son Nanasaheb was father of respondent-plaintiff. He was addicted to vices and therefore, Maruti effected a mutation entry whereby the Suit properties were transferred to the name of the plaintiff. The

defendant was a concubine or a mistress of plaintiff's father and was residing with him for 8 to 10 years. He was under her control. The plaintiff's mother-Laxmibai was looking after the property of the plaintiff during his minority. At the relevant time, there was no legal necessity for his mother Laxmibai to dispose of the property. The plaintiff's father used coercion and intimidated threats to her and compelled her to execute the sale deed on 20.10.1979 on behalf of the plaintiff in favour of the defendant. It was shown for consideration of Rs.5000/- but, there was no passing of the consideration. The plaintiff's grand father-Maruti died on 10.10.1979 which is 20 days before the sale deed. The plaintiff's mother was under pressure and confused. She was not appointed by any Court as guardian of the plaintiff to look after his properties. She had no authority to sell the suit property. The said transaction is void. Hence, the plaintiff is entitled for possession on the basis of his ownership. The said sale deed is not binding on the plaintiff. The plaintiff on attaining majority, demanded possession of the suit properties from the defendant but, she declined. Hence, within three years from attaining majority, he has filed a Suit for possession.

3. The defendant denied most of the pleadings and put up a specific case in paragraph 3. According to her, the plaintiff, his mother- Laxmibai and father Nanasaheb were having joint family property and all of them agreed and sold the suit property to the defendant for Rs.5000/- and put her in possession. The defendant has developed the said property by planting fruits bearing trees and constructed a house property. Hence, Nanasaheb and Laxmibai had filed this Suit in the name of the plaintiff. The transaction with the defendant was entered into during the life time of Maruti, Nanasaheb and Laxmibai were necessary parties. The sale deed is valid. Hence, Maruti and Nanasaheb were having half share each and on death of Maruti Nanasaheb became full owner.

4. The trial Judge after recording the evidence decreed the Suit holding that the plaintiff was entitled to recover the vacant and peaceful possession of the suit premises from the defendant. He dismissed the Suit with regard to other prayers.

5. Aggrieved, the defendant filed First Appeal No.50 of

1989 before the II Additional District Judge, Pandharpur. The learned Appellate Judge held that the plaintiffs had acquired valid title in the year 1978 whereas, the defendant did not acquire any title under the sale deed dated 30.10.1979 Exhibit 37. The learned first Appellate Court dismissed the appeal and modified the decree and directed inquiry into future mesne profits under Order 20 Rule 12 of the Code of Civil Procedure, 1908.

6. Hence, this appeal.

7. Heard learned advocate Mr.S.S.Kulkarni for the appellant and Mr.Drupad Patil for the respondents.

8. Mr.Kulkarni argued that the mutation entry does not create any title. He also argued that the plaintiff has not joined his father and mother as parties, and has not claimed any declaration for cancellation of the sale deed. In absence of such a declaration the Suit was not maintainable. He relied on Vishwambhar vs Laxminarayan (2001) (6) SCC 163 and Ramadas Menon vs Sreedevi 2010 (7) Mh.L.J. 334.

9. Relying on Ramadas vs Sreevedi AIR 2004 Kerala 126 he argued that the natural guardian of a hindu minor has power subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate but, the guardian can in no case, bind the minor by a personal covenant.“ The alienation made by the natural guardian mother are voidable in nature and not void. The plaintiffs must set aside the alienation within time.

10. He also relied on Ramnath Rambhau Gujar vs Shamrao Gopal Petkar 2010 (6) Mh.L.J. 737 to submit that Karta of a family can sell any un-divided share of the minor without permission of the District Court.

11. For a similar view, he also relied on Sri Narayan Bal vs Sridhar Sutar (1996) 8 SCC 54.

12. He relied on Jijabai Vithalrao Gajre vs Pathankhan AIR 1971 SC 315 for a proposition that the position in the Hindu

law as well as under section 6 of the Act is that normally when the father is alive, he is the natural guardian and it is only after him that the mother becomes the natural guardian of minor.

13. Lastly, he relied on **Janabai Raghunath Khomane vs Hirabai Malhari Atole 2003 (2) Mh.L.J. 101** to submit that where an application is made by the statutory purchaser, husband for affecting entry in record of rights, in favour of his wife, and same granted, it does not result in transfer of title to the lands standing in his name. What is prohibited by section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 is a transfer of ownership i.e. a transfer of title from one person to another. Where no title is transferred or conveyed from one to another, it would not amount to a transfer within the meaning of section 43 and no sanction of the Collector would therefore, be necessary.

14. The substantial questions of law promulgated on 16.8.2001 with my findings are as follows :

“ Admit on the following substantial questions of law :

“Whether mutation entry made by the Revenue authorities in favour of the grandson in respect of suit properties would

create title in his favour ?

“Whether the suit filed by the respondent/plaintiff was tenable in absence of father and mother being parties to the suit ?

(i) In the negative

(ii) In the negative

15. The learned advocates have taken me through the pleadings and evidence on record.

16. Following points emerge undisputed.

(A) The suit property was property of Maruti Raut. The plaintiff's pleadings and evidence does not disclose that it was ancestral property. It shows that it was his self-acquired property.

(B) Maruti had only son by name Nanasaheb. Laxmibai was his wife and plaintiff Sunil is his son. Maruti died on 10.10.1979. Before that, he effected mutation entry whereby the Suit properties were mutated in the name of the plaintiff and that his mother-Laxmibai is shown as a natural guardian. Mutation entry no.19/78 shows that he was having difficulty in seeing her being old aged and his grandson was maintaining the suit property and therefore, as per request, the properties were transferred to the name of Sunil. Pertinently, this entry does not show that the ownership of

the said property was transferred to the plaintiffs. The mutation entry at Exhibit 32 on 25.11.1960 showed that Maruti had purchased the suit land for Rs.5000/-.

(C) It is not disputed that on 30.10.1999 a sale deed came to be executed purportedly by Laxmibai as guardian of Sunil in favour of the defendant where the suit properties was sold to Laxmibai for Rs.5000/- at (Exhibit 37). There is no dispute that Sunil became major in October 1981 and immediately thereafter, he filed this suit on 27.9.1982 within three years from attaining majority.

(D) After carefully perusing the pleadings of the plaint, I find that this suit for possession is based on title. There are pleadings to show that there was challenge to the validity of the sale deed executed by his mother on the following grounds :

- i) That there was no legal necessity ;
- ii) There was no consideration;
- iii) His father had forced his mother to execute the sale deed;
- (iv) There was no permission of the Court for transfer of

the property and claimed that the said transaction was void and the defendant have got rights and therefore, she has no right to retain possession;

17. The plaint is silent on the point of previous possession of the plaintiff or of delivery thereof by plaintiff's mother to the defendant.

18. Mr.Drupad Patil learned advocate for the respondents submitted that there is mutation entry and the sale deed which discloses that the defendant has received possession under the sale deed.

19. These facts are material, in view of the fact that the plaintiff has to plead such a fact for a suit for possession based on prior possession.

20. It is not the plaintiff's case that the said property was belonging to Maruti's grandfather. There is no document to show that Maruti has inherited it, from his grandfather and therefore, it

was his ancestral property.

21. It is well settled law that immovable property can be transferred from one person either by way of registered documents as contemplated under the Transfer of Property Act, 1888 or by inheritance under the testate or intestate succession. Mere entry in the record of rights for transfer of property, does not confer any rights in favour of plaintiff.

22. Mr. Kulkarni, learned advocate for the appellant has rightly relied on the judgment of **Janabai Raghunath Khomane vs Hirabai Malhari Atole** *supra* wherein, a similar stand has been taken. As Maruti was the exclusive owner of the suit property, and mutation entry affected by him, did not create any right in favour of the plaintiff as grandson, and the ownership rights of the suit property will go to Nanasaheb by succession, on death of Maruti on 10.10.1989. This succession would be under section 8 and the plaintiff-Sunil would get no right. Therefore, I have no hesitation to answer substantial question no.1 in the negative.

23. The Plaintiff has failed to prove his exclusive

ownership over suit property. In fact, the revenue authorities or municipal authorities should not have permitted the parties to make such entries in the record in absence of any registered document or by any other legal mode.

24. The learned trial Court has rightly held that the plaintiff was not owner of the suit property. The first appellate Court had held that the mutation entry created ownership in favour of the plaintiff which is not legally correct view. When the plaintiff has failed to prove his title, learned advocate for the respondents has tried to fall back on his prior possession. However, I find that the plaintiff has not claimed any reliefs in the alternative on the basis of possession. The claim was exclusively based on title with the contention that the sale deed executed by the plaintiff's mother was null and void.

25. The judgment in **Vishwambhar vs Laxminarayan** supra disclose that the sale deed executed by the mother on behalf of a minor will be valid. In the present case, when the plaintiff was not having any title, the said sale deed executed by his mother

on his behalf would create no right in favour of defendant.

26. As far as possession is concerned, there are certain admitted facts. The land was belonging to Maruti while his son Nanasaheb was addicted to vices. It is claimed that the defendant was his keep or mistress and Nanasaheb forced his wife to execute the sale deed in favour of the defendant. These pleadings disclose that Nanasaheb was responsible for transfer of possession in favour of the defendant through the plaintiff's mother Laxmibai. Nanasaheb is still the owner of the said properties if he for some reason or the other he has created permissive possession, in favour of the defendant then he alone could have filed a Suit for possession.

27. Considering the nature of allegations that Laxmibai had executed the sale deed, if possession of the defendant was permitted by his father who was owner of the property. Nanasaheb and Laxmibai were necessary parties and the suit could have been filed by Nanasaheb. The Suit is not maintainable. Hence, I answer issue no.2 in the negative.

28. I clarify that the defendant has not made out any right by virtue of the sale deed. The suit is dismissed as the plaintiff has no right. It is therefore, unnecessary to consider validity of sale deed executed by Laxmibai in favour of the defendant. Hence, the order :

(i) Second appeal is allowed.

(ii) The judgment and decree of both the Courts are set aside and Regular Civil Suit No.438 of 1983 filed in Malshiras Court is dismissed.

29. Considering the facts, the parties shall bear their own costs. The decree shall be drawn up accordingly.

(A.M.DHAVAL, J)