

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Second Appeal No. 0267 of 2019

District : Aurangabad

Uttam s/o. Dhanu Rathod,
Age : 65 years,
Occupation : Pensioner,
R/o. Mhada Colony, Devlai,
Aurangabad.

.. Appellant
(Original
defendant
no.02)

versus

1. Sau. Menka w/o. Vijay Rathod,
Age : 40 years,
Occupation : Household,
R/o. Plot no.55,
Satara Parisar,
Near Ekta Hotel,
Aurangabad.
2. Jaikumar s/o. Vijay Rathod,
Age : 18 years,
Occupation : Student,
R/o. as above.
3. Piyush s/o. Vijay Rathod,
Age : 13 years
(Minor U/g. Respondent
no.01 Maneka as she is
mother),
Occupation : Student,
R/o. as above.
4. Vijay s/o. Uttam Rathod,
Age : 42 years,
Occupation : Nil,
R/o. as above.

.. Respondents
(Nos.01 to 03 -
Original
plaintiffs
&
No.04 -
Original
defendant
no.01)

.....

*Mr. Nandkumar Y. Kingaonkar, Advocate, for the
appellant.*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30TH APRIL 2019

ORDER :

01. Present appeal has been filed by original defendant No. 2, challenging the concurrent judgment and decree passed in Regular Civil Suit No. 838 of 2010 passed by learned Joint Civil Judge Junior Division, Aurangabad on 04-12-2012 and Regular Civil Appeal No. 68 of 2013, passed by learned District Judge-2, Aurangabad on 11-12-2018; whereby suit for partition and separate possession filed by present respondent No. 1 to 3 came to be decreed. [Parties are referred as per their nomenclature before the trial Court.]

02. Before turning to the disputed facts, it would be convenient to take a glance at the admitted facts. Defendant No. 1 is the husband of plaintiff No. 1 and father of plaintiffs No. 2 and 3. Defendant No. 2 is the father of defendant No. 1, father-in-law of plaintiff No. 1 and grandfather of plaintiffs No. 2 and 3. A sale-deed came to be executed by defendant No. 1 in favour of defendant No. 2 on 03-09-2010 for a consideration of Rs.1,21,000/-.

03. Plaintiffs have come with a case that there was partition between defendant No. 1 and 2 on 09-04-2007. Suit house bearing plot No. 55, House No. 5074

admeasuring 1000 sq.ft with construction of 600 sq.ft, situated at Gut No. 3 in village Satara was allotted to defendant No. 1 in that partition. Other properties were given to other sons of defendant No. 2 and his wife. Name of defendant No. 1 came to be mutated in the Village Panchayat record on the basis of said partition. Plaintiffs are residing in the said premises. However, defendant No. 1 executed the sale-deed without consideration in favour of defendant No. 2, just to defeat the rights of plaintiffs. The said sale-deed is not binding on the plaintiffs. When plaintiff came to know about the same, she demanded the share of plaintiffs from defendant No. 1. He refused and therefore, suit is filed.

04. Defendants No. 1 and 2 have contested the suit by filing written statement. They have admitted that the suit plot was in the name of defendant No. 2 and then execution of partition deed dt. 09-04-2007 between him and other family members. It is stated that the said document was executed to avoid dispute in the family. It is not a partition-deed, but a family arrangement. The said document was not to be acted upon. It has been denied that the sale-deed has been executed without any legal necessity. It is stated that possession has been handed over to defendant No. 2 on the date of sale-deed. It has been stated that defendant No. 2 has purchased the property by taking loan from Bank. He has become owner and suit

is not maintainable.

05. Taking into consideration the rival contentions, issues came to be framed. Parties have led oral as well as documentary evidence. After considering the evidence and hearing both sides, the learned Trial Court has decreed the suit. The sale-deed has been held to be not binding on the share of plaintiffs. It is stated that plaintiffs No. 2 and 3 are entitled to get $1/3^{\text{rd}}$ share each. The learned First Appellate Court has dismissed the appeal preferred by original defendant No. 2. Hence, this second appeal.

06. Heard learned Advocate Shri. N. Y. Kingaonkar for appellant / original defendant No. 2. Perused the impugned judgments and decree. It is not even necessary to issue notice to the respondents. It has been vehemently submitted on behalf of appellant that both the Courts below have failed to appreciate the evidence and law points properly. Both the Courts have failed to consider that suit property was the self-acquired property of appellant and therefore, it was not liable to be partitioned. He had purchased it in 2003, as he was a Government Servant. There is matrimonial dispute between plaintiff No. 1 and defendant No. 1. Now, appellant has been dragged in the same. Both the Courts below have failed to consider that the family arrangement was made for refund of loan amount. Therefore, substantial

questions of law are arising in this case.

07. Important point is that most of the facts are admitted to the defendants. The relationship is admitted. Fact of partition between defendants No. 1, 2 and other family members was contended by the plaintiffs; whereas though fact of execution of document styled as partition-deed was admitted by defendants, but they say that it was family arrangement. In fact, even family arrangements are also binding on all the members of the family. No doubt, such family arrangements are required to be registered, but still even an unregistered family arrangement would operate as a complete estoppel against the party who is signatory to the same.

08. Most important fact is that after the said document of partition-deed dt. 09-04-2007, name of defendant No. 1 came to be mutated to the property. Thereafter, defendant No. 2 has purchased the same from him. Now, he is coming with a case that the said document of partition-deed was agreed to be not to act upon. When he wants to base his title over the said property on the basis of said document, he can not come with a defence that parties to the document had agreed not to act upon the said document. Interestingly he has now based his claim on the original sale-deed of 2003. When with his volition he had allowed the said property to be brought into

hotchpot and give it to one of his son, then now he can not back out and say that he was the exclusive owner of that property. When he himself is the signatory to the partition deed Ex.48, then he can not deny it, especially on the background that thereafter sale-deed was shown to have been executed between him and defendant No. 1. When he has purchased the said property from defendant No. 1, it presumes that he had accepted defendant No. 1 as the exclusive owner of the said property by virtue of partition-deed.

09. Both the Courts below have considered the facts, evidence and submissions properly, hence, there is no question of any substantial question of law. There is no merit in present appeal as contemplated in Section 100 of Code of Civil Procedure. Hence, the appeal stands disposed of as **"Not Admitted"**.

(Smt. Vibha Kankanwadi)
JUDGE

.....