

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10068 OF 2019

Premasukh Mansukh Sancheti
and others

Petitioners

Versus

Rajendra s/o Balraj Potpulewal
and others

Respondents

Mr.P.F.Patni, advocate for the petitioners.
Mr.M.A.Khan, advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 13th August, 2019

PER COURT:

1 I have heard the learned advocates for the respective sides at length. Their submissions concluded at 6.15 p.m. The issue is, as to whether the learned Principal District Judge was right in passing the impugned order dated 13.06.2019, allowing application Exhibit-23 under Order XLI Rule 27 of the Code of Civil Procedure.

2 The parties seem to be in litigation at least for the last 4 decades. Several proceedings have been filed in between these parties. A sale deed is said to have been signed by the GPA holder

of Rampyaribai, on 30.10.1984. The contention of the petitioners herein is that Rampyaribai died after 30.10.1984. Moreover, the sale deed dated 30.10.1984 is not at issue. The issue raised before the appellate Court in RCA No.47 of 2012 is, as to whether the SCS No.26 of 1989 has been rightly decreed?

3 It is not in dispute that the sale deed dated 30.10.1984 is not at issue in the said suit and is not a part of the litigation in these proceedings. It is also undisputed that the sale deed dated 30.10.1984 has not been set aside by any Court till today. The date of death of Rampyaribai is only in connection with the said sale deed and if that sale deed is not at issue, it is inconsequential, whether Rampyaribai had died on any particular date, is the contention of the petitioners.

4 The learned advocate for the respondents submits that Rampyaribai had died on 07.12.1983. Her GPA holder, therefore, would not continue after the said date. He has, therefore, illegally entered into a sale deed with the petitioners. He, however, concedes that there is no specific challenge to the sale deed and there is no prayer in the proceedings at issue, that the sale deed be declared as null and void and not binding on them.

5 Having considered the submissions of the learned advocates for the respective sides, it is evident that even if the death of Rampyaribai is established before the appellate Court in RCA No.47 of 2012, it would not impact the pending proceedings since the issue, as to whether the sale deed dated 30.10.1984 is null and void or be declared as not binding, is not *sub-judice*.

6 I have repeatedly called upon the learned advocate for the respondents to indicate as to whether the sale deed is at issue and whether the appellate Court is called upon to deliver an order that the sale deed is null and void. The learned advocate cannot point out from the pending appeal and the suit of 1989, that the said sale deed is under challenge.

7 The appellate Court has recorded in paragraph no. 12 of the impugned order, that the issue revolves around the validity and legality of the sale deed in favour of the plaintiffs, which was executed by the GPA holder of Rampyaribai. This is clearly erroneous.

8 In view of the above, I do not find that the appellate Court was right in concluding that the validity and legality of the sale deed is at issue. So also, the sale deed having been executed on 30.10.1984, could have been set aside within three years as per the law of limitation under Article 58 of the Limitation Act.

9 Considering the above, this petition is allowed. The impugned order dated 13.06.2019, passed by the appellate Court, below Exhibit-23 in RCA No.47 of 2012, is quashed and set aside. The application Exhibit-23 stands disallowed. Since the learned Principal District Judge is now transferred and replaced by another learned Judge, the litigating sides shall appear before the learned appellate Court in RCA No.47 of 2012, which is posted on 03.09.2019. All the parties shall advance their oral submissions afresh in view of the change in the Presiding Officer and the appellate Court would endeavour to decide RCA No.47 of 2012, as expeditiously as possible and preferably on or before 15th October, 2019.

RAVINDRA V. GHUGE
JUDGE