IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.200 OF 2016
with
CIVIL APPLICATION NO.275 OF 2016

Saurabh Bhagwan Balwadkar & Ors .. Appellants
vs
Bhagwan Gneba Balwadkar & Ors .. Respondents

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Mr.Madhav Jamdar with Mr.Rohan Surve for Appellants
Mr.Cyrus Ardeshir with Ms Nikita Panse i/b M/s Veritas Legal for Respondent nos.3 and 4.

Mr.G.S.Godbole I.b. Mr.Sukand Kulkarni for Respondent nos. 5,5a and 5b
Mr.Jaydeep Deo for Respondent no.6

CORAM : S.C. GUPTE, J

DATE : 1st OCTOBER 2019

P. C.

1. Heard.

2. This Appeal from Order challenges an order passed by the Joint Civil Judge, Senior Division, Pune on an interlocutory application of the appellants (Original plaintiffs) in a Special Civil Suit. The Suit prayed for partition of joint family property and perpetual injunction against transferees of the property under other co-parceners.

3. The Plaintiffs are children of one Bhagwan Balwadkar, and his wife - Vaishali Balwadkar, who are respectively defendant nos.1 and 2 to

the Suit. The Suit property was sold by a registered Development cum-Sale Agreement dated 16.2.2005 by members of the Balwadkar family, who are descendants of Gyanba Mahadu Balwadkar, the original owner of the Suit property, to defendant no.3. The agreement was followed by a registered Sale Deed dated 3.10.2010. It is the Plaintiff's case that they were minors on the day the agreement for sale as well as Sale Deed were executed in respect of the Suit property. They claim to be members of Balwadkar family, having a share in the Suit property in their own right. Their case is that the property has been dealt with by their parents and in particular, their father-defendant no.1, not in his capacity as a karta of the joint family but as father and natural guardian of the plaintiffs. Relying on the judgment of the Supreme Court in the case of **Panni Lal vs Rajendra Singh** (1993 (4) SCC 38, it is submitted that Section 8 of the Hindu Minority and Guardianship Act, 1956 empowers the legal guardian to alienate a minor's immovable property provided, such alienation is necessary and for the benefit of the minor or his estate and is effected after obtaining the permission of the Court. It is the case of the plaintiffs that after attaining majority, they have avoided the transaction of sale and are entitled to seek a declaration of nullity in respect of the transaction and seek partition and separate share of the suit property.

4. There is every indication on record including the text of the very agreement for sale, followed by the Sale Deed, that the transaction was effected by defendant no.1, who was admittedly a karta of the joint family consisting of defendant nos.1 and 2, and the plaintiffs. The plaintiffs have themselves admitted in the plaint that defendant no.1 was a karta of the joint family and that the agreement for development of suit property

was executed by defendant no.1 on behalf of the HUF as its karta. If the transaction is executed by defendant no.1 as karta of the joint family and not in his capacity solely as the father or legal guardian of his children, there is no question of any permission being obtained from Court under section 8 of the Hindu Minority and Guardianship Act, 1956; the only question in such a case is of legal necessity for which the property has been sold. The Sale Deed refers to the legal necessity. After consideration of the material on record, the trial Court has come to a categorical *prima facie* finding that the property was dealt with by the karta for a legal necessity and for the benefit of the estate, and accordingly, rejected the plaintiff's interim application. There is no infirmity to be found in the finding arrived at by the trial Court on this issue. It is indeed supported by material on record.

5. Learned counsel for the appellants makes a sweeping reference to the value of the property mentioned for the purpose of stamp duty in the registration documents. The registration documents refer to valuation as Rs.1.20 crores, whilst the Agreement value of the Suit property, is shown at Rs.53,80,000/-. The mere circumstance of the Ready Reckoner rate, which is used for the purpose of stamp duty calculation, being more than the Agreement value, is not sufficient to assail the reasonableness of the transaction in terms of value received by the vendor. There is no other material besides this lone reference to stamp duty valuation in the registration papers. There is no direct reference, besides, to any undervaluation of the property in the pleadings of the plaintiffs.

6. There are two other parcels of property, which are also the

subject matters of dispute in the present case, which defendant nos.1 and 2 have dealt with. Though particulars in these cases may be different, same principles are invoked by the respective parties. For reasons stated above in case of transactions between defendant no.1 and defendant no.3, even as regards these two transactions, there is no merit in the contentions of the Plaintiffs.

7. Accordingly, there is no merit in the Appeal from Order. Appeal from Order is dismissed.

8.. In view of the dismissal of Appeal from Order, the Civil Application does not survive and is disposed of.

9. It is made clear that the above observations are made for deciding the Appeal from Order, which challenges an interlocutory order passed on a *prima facie* assessment of the case by the trial Court. These observations shall not come in the way of the adjudicatory exercise to be carried out in the Suit. The trial Court shall apply its mind independently to the facts of the case whilst deciding the Suit.

(S.C. GUPTE, J)