

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.267/2006.

1. Dr. Jeevanpuri Tarapuri Multani,
(Since dead) through L.R's-
 - 1-A) Smt.Vimalbai wd/o Jeevanpuri Multani,
aged about 42 years, Occ. Housewife.
 - 1-B) Shri Pokeshpuri s/o Jeevanpuri Multani,
aged about 23 years, Occ. Professor,
Both are R/o Deori, Taluka Deori,
District Gondia.
2. Sau.Meerabai w/o Bhimrao Girhepunje,
aged about 38 years, Occ. Household.
3. Sau.Sunandabai w/o Madhavrao Girhepunje,
aged about 34 years, Occ. Cultivation.
(Since dead) through L.R.-
 - 3-A) Ku.Manisha d/o Madhavrao Girhepunje,
aged about 9 years, Occ. Education.

The appellant Nos.2 and 3 are R/o Kanhalgaon,
Post Futana, Taluka Deori, District Gondia.

...APPELLANTS.

Versus

1. Mohinibai d/o Tarapuri Multani
alias Asha w/o Rekhahal Gautam,
aged about 51 years, Occ. Service,
R/o Fulchur, Taluka and District Gondia.
2. Manojpuri s/o Jeevanpuri Multani,
aged about 35 years, Occ. Cultivation,
R/o Kanhalgaon, Taluka Deori,
District Gondia.

...RESPONDENTS.

Shri D.T.Shinde, Advocate for the appellants.
Shri P.N.Sangidwar, Advocate for the respondents.

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CORAM : PUSHPA V. GANEDIWALA, J.

DATE OF RESERVING THE JUDGMENT : NOVEMBER 04, 2019.
DATE OF PRONOUNCING THE JUDGMENT : DECEMBER 13, 2019.

JUDGMENT :

By this appeal, under Section 100 of the Code of Civil Procedure, 1908, the defendants have challenged the judgment and decree dated 02/01/2006 passed by the Court of 3rd Ad-hoc Additional District Judge, Bhandara in Regular Civil Appeal No.73/2005, whereby the Appellate Court allowed the appeal preferred by original plaintiffs and quashed and set aside the judgment and decree of dismissal of suit dated 25/10/2004 passed by the Court of Joint Civil Judge, Junior Division, Sakoli in Regular Civil Suit No.104/1999.

2. The learned District Judge declared that plaintiff No.1 is the owner of the land bearing Gat No.18 ad measuring 2.20 H.R. (hereinafter referred to as “the suit property”). It is further declared that the Sale Deed dated 19/03/1999 executed

by defendant No.1 - Jeevanpuri in favour of defendant No.2 - Meerabai and defendant No.3 - Sunandabai is null and void and not binding on plaintiff No.1. Also, the defendants were perpetually restrained from interfering with the possession of the plaintiffs over the suit property.

3. During pendency of this appeal, defendant Nos.1 and 3 expired and their legal representatives were brought on record. The parties shall hereinafter be referred to as per their original status before the Trial Court.

The facts and circumstances giving rise to filing of the present appeal, in brief, are as below.

4. The plaintiffs' suit is for permanent injunction and declaration. Plaintiff No.1 - Mohinibai is claiming the ownership over the land bearing Gat No.18, Survey No.317, ad measuring 2.20 H.R. situated at Kanhalgaon (hereinafter referred to as "the suit property") by virtue of Gift Deed dated 19/03/1999 executed by her father – Tarapuri during his lifetime for the

purposes of her maintenance and marriage. It is the case of plaintiff No.1 that as her other siblings were married during the lifetime of her father and she was not married at the relevant time, her father had reserved the suit property for her maintenance and marriage expenses. Accordingly, since 1976, her name came to be mutated in the revenue record.

5. Plaintiff No.1 is sister of defendant No.1 and plaintiff No.2 is son of defendant No.1. Defendant Nos.2 and 3 are the purchasers of a portion of the suit property from defendant No.1.

6. As plaintiff No.1 came to know about the sale transaction of the part of the suit property in favour of defendant Nos.2 - Meerabai and 3 - Sunandabai by defendant No.1, she filed the present suit for declaration and permanent injunction.

7. The defendants in their common written statement (Exh.12) resisted the suit and specifically pleaded that the

defendant No.1 being the sole male owner in the family, has every right to deal with it and accordingly, he had sold the suit property to defendant Nos.2 and 3 in order to repay the loan amount.

8. The Trial Court framed necessary issues and recorded evidence as adduced by the parties. The plaintiff No.1 examined herself (Exh.23) and two other witnesses. Similarly, the defendant No.1 examined himself and one more witness. Both the parties also brought on record some documentary evidence. The Trial Court, on merits, dismissed the suit vide judgment and decree dated 25/10/2004 mainly on the ground that the plaintiffs have failed to establish the Gift Deed of the suit property which was allegedly executed in favour of plaintiff No.1 by her father – Tarapuri and the revenue entries cannot confer title so also the plaintiffs have failed to prove their possession over the suit property.

9. The aforesaid judgment and decree passed by the Trial Court was carried further in appeal by the plaintiffs. The

First Appellate Court found substance in the suit of the plaintiffs and declared the ownership over the suit property in favour of the plaintiffs and restrained the defendants to interfere with the possession of the plaintiffs over the suit property and declared that the Sale Deed dated 19/03/1999 executed by defendant No.1 in favour of defendant Nos.2 and 3 for part of the suit property as ab initio null and void. This judgment and decree passed by the First Appellate Court is impugned in this appeal.

10. The following substantial questions of law framed for adjudication of the present appeal:-

- i. Is the First Appellate Court was correct in giving finding of ownership over the suit property in favour of the plaintiffs in the absence of any evidence to that effect?
- ii. Whether mutation entries and revenue records are conclusive proofs of title?
- iii. Whether there can be any oral gift in the face of specific provisions of Sections 122 and 123 of the Transfer of Property Act, 1882?

iv. Whether the First Appellate Court was justified in decreeing the claim of ownership despite absence of a prayer by plaintiffs to that effect?

v. Whether the findings recorded by the First Appellate Court are perverse and based on no evidence?

vi. What is the nature of suit property in the hands of Tarapuri and whether defendant No.1 was the exclusive owner of the suit property, being male member of the family?

11. At the outset, it is well settled that the entries in the revenue record with regard to holding and possession of the immovable property do not confer title on a person whose name is mutated. Plaintiff No.1 is claiming her ownership over the suit property on the basis of Gift Deed executed by her father – Tarapuri in her favour for her maintenance and marriage purposes. She is claiming that since then, she is in possession of the suit property and cultivating the same. That since 1976, her

name has been mutated in the revenue record with regard to the suit property. She claims that the suit property is a self acquired property of her father – Tarapuri, however, she could not prove the same. She also could not prove the gift of the suit property to her by way of any registered document.

12. Admittedly, the marriage of plaintiff No.1 was solemnized after two years of the death of her father – Tarapuri in the year 1984. A heavy reliance was placed by the learned counsel for respondent Nos. 1 and 2 on the judgment given by the Andhra Pradesh High Court in the case of ***Bhubaneswar Naik Santoshrai Vs. The Special Tahsildar [AIR 1980 AP 139]*** wherein the High Court has taken a view that if the property is reserved for maintenance of an unmarried daughter, Section 122 of the Transfer of Property Act, 1882 is not applicable and the said property cannot be considered under Andhra Pradesh Land Reforms (Ceiling of Agricultural Holdings) Act 1973. Further, the High Court in paragraph No.6, relying on Sirkar's Hindu Law, Edition 6, page 328, has held as under:-

“6. Similarly an unmarried daughter acquires

an imperfect right in the father's property by virtue of which she enjoys the same and is maintained out of it until marriage and is also entitled to a quarter share, if partition takes place before her marriage, that is to say, when she continues as a member of the family XXXX."

13. On the other hand, defendant No.1 took a stand that the suit property is an ancestral property. Evidently, plaintiff No.2 is the son of defendant No.1 and they are on inimical terms. Admittedly, the suit property is not separate or self acquired property of defendant No.1.

14. As far as plaintiff No.2 is concerned, the nature of property in the hands of defendant No.1 is an ancestral property. Though, plaintiff No.1 could not prove her ownership to the suit property, however, at the same time, it cannot be said that defendant No.1 is an exclusive owner of the suit property.

15. Interestingly, there is no pleading as regards share of plaintiff No.2 in the suit property being one of the co parceners. However, in view of some admitted facts, coupled with the position of law so also power of this Court under Order 41 Rule 33 of the Code of Civil Procedure, this Court is of the view that defendant No.1 cannot be said to be the exclusive owner of the suit property as the property in his hands admittedly is not his self acquired or separate property so as to create any third party interest in the same. The plaintiff No.2 has share in the property, he being one of the coparceners. In addition to this, defendant No.1 also could not prove that the parties are governed by their customs, they being of the Scheduled Caste. He also could not prove the custom with regard to inheritance of the suit property.

16. Given the aforesaid facts and circumstances of the case, I am inclined to allow the appeal partly and hence, I proceed to pass the following order:-

ORDER.

1. The Second Appeal is partly allowed.
2. Suit is partly decreed.
3. It is declared that the registered Sale Deed dated 19/03/1999 executed by defendant No.1 in favour of defendant Nos.2 and 3 is valid only to the extent of share of defendant No.1 in the suit property.
4. Till the shares of plaintiff No.2 and defendant No.1 are crystallized, the possession of plaintiff No.2 over the suit property shall not be interfered by the defendants.

JUDGE

Sumit.