

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 541 OF 2018
WITH
CIVIL APPLICATION NO. 1258 OF 2018

Sunanda Chandrakant Patil (through ... Applicant/Appellant
P.O.A.) Shri. Sahebpeer Husain
Chamanmalik

V/s.

Shri Kallappa Jannappa Shedbale ... Respondent

Mr. Amey Neminath Patil for the appellant/applicant.

Ms. A.R.S. Baxi for the respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 26th FEBRUARY 2020

P.C. :

. Heard the respective counsel.

2. The appellant herein takes exception to the judgment and order dated 6th August 2018 passed by the District Judge and Additional Sessions Judge, Sangli in Regular Civil Appeal No. 374 of 2013, thereby setting aside the judgment and order dated 31st July 2013 passed by Civil Judge Senior Division, Miraj in Regular Civil Suit No. 122 of 2008.

3. The factual matrix of the case is that the present appellant is original plaintiff in Regular Civil Suit No. 122 of 2008. The suit was

filed for partition and possession. The plaintiff had prayed for 1/3rd share of her father's property which is described in the suit claim. The defendant no. 1 is the mother of the plaintiff.

4. It was the case of the plaintiff that the suit properties are ancestral properties. That Yadu Shedbale was her grandfather. He was protected tenant of Dattu Yesumali. As contemplated under section 32(G) and 32 (H) of the Bombay Tenancy and Agricultural Lands Act, 1948. Yadu had paid the entire valuation of the land and therefore Yadu had become the owner of the suit property. That, Yadu died on 8th May 1979. The legal heirs of Yadu Shedbale, along with Parisa, who happens to be the brother of Yadu Shedbale were brought on revenue record in Survey No. 657/1. In short, property of the father of the plaintiff was the property of Yadu Shedbale.

5. The Plaintiff had challenged the Gift Deed dated 21st March 2007 executed in favour of the original defendant no. 2 on the ground that her father had gifted the said properties to defendant no.2 without obtaining the consent of her mother and herself and therefore, the gift deed was bad in law. The defendant no. 2 had filed a counter-claim seeking injunction, as according to the defendant no.2, the plaintiff had caused obstruction in his peaceful possession. Needless to state that the counter-claim was rejected.

6. The learned Appellate Court has appreciated the substantive evidence of the plaintiff in its proper perspective and observed as follows:-

“.....According to the plaintiff her other uncles have sold out their share in the suit property and was staying separately and that the properties were divided by metes and bounds and all the co-shares were enjoying their property separately and that they have also disposed off the said suit property in accordance with their necessity therefore it can be seen that the property which plaintiff had inherited was partitioned and father of plaintiff had become owner and the property stood as self acquired property in the hands of Parisa”.

7. In these circumstances, the substantial question of law would be:-

“Whether a gift deed could be executed in respect of a self-acquired deed.”

8. It was the specific contention of the defendant no. 2 that the said suit properties happened to be self acquired properties of Parisa Shedbale and therefore he had authority to execute the gift deed or create any 3rd party interest as per his wish, during his lifetime as the plaintiff had failed to prove that these were ancestral properties.

9. At this stage, the substantive evidence of the plaintiff needs to be taken into consideration wherein the plaintiff has specifically stated that Parisa Shedbale had borne all the expenses independently for the water scheme, electronic connection and other requirements. She had admitted that she did not have any brother alive on the day of execution of the gift deed. There are inherent inconsistencies in the evidence of the plaintiff.

10. The defendant no.2 has examined witnesses namely Tanaji Khot who has specifically contended that in order to install the electronic motor he had sold one guntha land in favour of defendant no.2 which forms a part of the suit property. Once the plaintiff had claimed that there was no partition between brothers i.e. brothers of Parisa and their legal heirs the plaintiff could not have claimed only 1/3 rd share of her father's property. That the other legal heirs are not impleaded as necessary parties, although suit was filed for partition and possess. Hence, the suit claim would fail for non-joinder of necessary parties.

11. In view of these observations, it is clear that Yadu had every authority to execute a gift deed in favour of respondent no.2 as it was his self acquired property.

12. The house property also was subdivided in 4 parties and each one of them was possession of property individually and independently and in this background father of the plaintiff had authority to part with the suit property by virtue of the gift deed. The Appellate Court has rightly held that the plaintiff has failed to prove that the suit property was coparcenary property.

13. In view of this, the issue stands answered accordingly. The second appeal is dismissed. Civil Application is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J)