

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.12 OF 2021
WITH CA/524/2021 IN SA/12/2021

BABAN VISHNU SATPUTE
VERSUS
SAYAJI VISHNU SATPUTE AND OTHERS

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Mr. A. S. Bajaj, Advocate for appellant.
Mr. G. B. Kadlag, Advocate for respondent Nos.1 to 4, 6, 7, 17, 18 and
LRs. of R/5 Thr. R/15 and 16.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17.11.2021

ORDER :-

. Present appeal has been filed by original defendant No.1 challenging the concurrent judgment and decree passed by the Courts below. Present respondent Nos.1 to 7 are original plaintiffs, who had filed Regular Civil Suit No.158 of 2012 for partition, declaration and separate possession. The said suit came to be decreed by learned Joint Civil Judge Senior Division, Sangamner on 30.08.2017. Present appellant challenged the said judgment and decree by filing Regular Civil Appeal No.91 of 2017. It was dismissed by learned District Judge-2, Sangamner, Dist. Ahmednagar on 01.02.2020. Hence, this second appeal.

2. Heard learned Advocate Mr. A. S. Bajaj for the appellant and learned Advocate Mr. G. B. Kadlag for respondent Nos.1 to 4, 6, 7, 17, 18 and legal heirs of respondent No.5 through respondent Nos.15 and 16.

3. It has been vehemently submitted on behalf of the appellant that both the Courts below have failed to appreciate the evidence properly. The decree that has been passed is perverse. Though partly first Appellate Court accepted the contention of the appellant that Chandrabhagabai Vishnu Satpute – mother of the present appellant and plaintiff No.1, had capacity to deal with the property in view of Section 14(1) of the Hindu Succession Act and though she had received the same under partition, yet further the first Appellate Court went wrong in observing that the alleged relinquishment deed or the affidavit dated 13.10.2000 cannot be said to be legal and, therefore, the compromise decree that was passed in earlier suit i.e. Regular Civil Suit No.227 of 1993 cannot be said to be binding on the plaintiffs. It was wrongly held that defendant No.1 got the said decree by playing fraud on Court, as the said document was never produced before the Court. The said document was executed by Chandrabhagabai, but when the suit was filed by the present appellant against Chandrabhagabai, there was compromise between them and she accepted that she has relinquished

her share on 30.06.1993 in favour of son of present appellant. That decree was binding on all and, therefore, now, the plaintiffs cannot get any right in the said property. In fact, it was not required that the compromise decree ought to have been registered under Section 17 of the Indian Registration Act, nor the relinquishment was required to be registered in view of the fact that the affidavit was filed by Chandrabhagabai in the earlier suit and on the basis of that, the compromise decree was passed. The Appellate Court has not taken into consideration the direct provision under Order XXIII Rule 3A of the Code of Civil Procedure, which provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is passed was not lawful. Reliance has been placed on the decision in ***Mohammade Yusuf and others Vs. Rajkumar and others, [264 (2020) 10 SCC]***, wherein it has been held that “compromise decree comprising immovable property which is the subject-matter of the suit or proceeding in question does not require registration. It is only a compromise decree comprising immovable property other than that which is the subject-matter of suit or proceeding in question, which requires registration.” The Hon’ble Supreme Court had considered that in that case in the written statement itself the defendant had admitted the claim of the plaintiff to be correct and, therefore, it was also held

that the ratio laid down in *Bhoop Singh Vs. Ram Singh*, [(1995) 5 SCC 709] is not applicable. Therefore, substantial questions of law are arising in this case requiring admission of the second appeal.

4. Per contra, the learned Advocate for the respondents supported the reasons given by both the Courts below and submitted that when defendant No.1 had played fraud on the Court as well as Chandrabhagabai, the decree is not binding on the plaintiffs as well as other respondents.

5. At the outset, it is to be noted that the original plaintiffs have not filed cross appeal or cross objections challenging the reversal of the finding given by the Trial Court; by the first Appellate Court in respect of the nature of the suit property. The Trial Court had held that the suit properties were ancestral and joint Hindu family properties of the plaintiffs and defendants. It is to be noted that the plaintiffs had come with the case that there was partition effected by partition deed dated 02.05.1989 in which the house properties were given to Chandrabhagabai for her lifetime and it was also stated that after her death, the suit properties would devolve on the sons in equal share. According to the Trial Court, Chandrabhagabai had no absolute right or ownership in respect of the property given to her as per the agreement

i.e. partition deed in the year 1989, but it was only for her life interest. It was held that the statement in the compromise decree will not be binding on the plaintiffs. The first Appellate Court has come to the conclusion after the interpretation of Section 14(1) of the Hindu Succession Act and the decision in ***V Tulasamma and others Vs. V Sesha Reddi (Dead) by LRs., [1977 AIR 1944 :: 1977 SCR (3) 261]***. The view taken by the first Appellate Court is correct. The parties are not at dispute that the partition deed Exhibit-80 was executed on 02.05.1989 in which suit properties were given to Chandrabhagabai. No doubt, it was mentioned that it was given for her life interest, but in ***V Tulsamma's case (Supra)*** the two criterion given, have been properly considered and, therefore, it can be definitely considered that Chandrabhagabai had right to alienate the suit property.

6. Now, it is required to be seen as to whether she had in fact alienated the suit property and what would be the effect of the compromise decree that was passed in Regular Civil Suit No.297 of 1993. It is to be noted that, that suit was filed by present appellant alone against Chandrabhagabai. Others were not party to the said proceedings. Contents of the plaint would show that according to the plaintiffs, present defendant No.1 had become exclusive owner of the suit property in view of relinquishment of rights of ownership by

Chandrabhagabai in his favour. The specific date was given i.e. 30.06.1993. But then, he says that his rights were challenged or denied by Chandrabhagabai on 07.07.1993 and, therefore, he filed the suit for declaration and injunction. It is to be noted that the said suit appears to be filed on 09.07.1993 and was decreed on 26.07.1993. It is stated that there was compromise pursis that was produced at Exhibit-12 in that matter wherein Chandrabhagabai admitted that she had relinquished her share on 30.06.1993 in favour of plaintiff therein. At the outset, it is to be noted that though the present suit property was the property in that suit, yet Chandrabhagabai was the exclusive owner of the said property. There was no occasion for relinquishment of her rights in favour of defendant No.1/plaintiff therein. The said relinquishment could have been done only by way of a registered instrument and not otherwise. No such instrument appears to have been registered on 30.06.1993. There was no document and whatever affidavit was filed on record at Exhibit-120 in this case appears to be the affidavit sworn by Chandrabhagabai on 30.06.1993 before the Executive Magistrate. Perusal of that document showed that she was giving the suit property by way of gift to the son of present appellant. Now, it is to be noted that if that affidavit is to be considered, then it is reflecting something else than it was not contended in the earlier suit i.e. Regular Civil Suit

No.227 of 1993. On the contrary, in that suit, though having knowledge about the affidavit Exhibit-120; the present appellant had contended that, that relinquishment is in his favour and thereby making him exclusive owner of the suit property, Exhibit-120 appears to have been produced by plaintiff vide list Exhibit-53 and when it was a certified copy, the defendant No.1 had taken objection to exhibit that document. In his cross-examination, defendant No.1 has admitted that he is aware about the certified copy of the affidavit filed in this case. The said document came to be exhibited in the testimony of P.W.2. Advocate Anil Kasar was then representing the present appellant in the earlier suit. Thus, it is to be noted that when the concerned Advocate, who had drafted and produced the said affidavit Exhibit-120 before the Court dealing with Regular Civil Suit No.227 of 1993, then in fact the concerned Court, before whom the compromise pursis was filed, ought to have taken precaution to know what is being transferred is correct or not.

7. Perusal of said affidavit Exhibit-120 would show that the contents of the plaint in Regular Civil Suit No.227 of 1993 were not consistent.

8. Further, even if we consider that such compromise had taken place, but then we are also to consider that when Chandrabhagabai was the exclusive owner and could have transferred her ownership right only

by way of gift, sale or will i.e. the legally permissible mode of transfer of immovable property as per the Transfer of Property Act, then the ratio laid down in ***Bhoop Singh (Supra)*** will have to be considered. The said case was distinguished in ***Mohammade Yusuf and others (Supra)*** and para No.14 of the said case clearly states that “in ***Bhoop Singh (Supra)*** this Court held that the earlier decree required registration for the reasons as mentioned in para 19. The reasons given in para No.19 of the case have no application in the facts of the present case.” Further, in ***Mohammade Yusuf and others (Supra)***, it was held that the subject matter of the suit was covered by exclusionary clause of Section 17(2) (vi) and the Hon’ble Supreme Court held that the compromise was *bona fide* in the sense that it was not a device to obviate payment of stamp duty and frustrate the law relating to registration. Further, there was no question or it was not held that the said compromise was creating right, title or interest in immovable property for the first time. However, in the present case, the ratio laid down in ***Bhoop Singh (Supra)*** would be applicable, as it has been demonstrated earlier, Chandrabhagabai had at the most, it can be inferred, would have gifted the property to the son of the present appellant and not in view of the affidavit Exhibit-120, but then she had no intention to give it to the present plaintiffs. There was no occasion for surrender of her rights, as she was the exclusive owner

of the property. In ***Bhoop Singh (Supra)***, therefore, it has been held as follows :-

“18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100 or upwards in favour of any party to the suit the decree or order would require registration....”

Both the above clauses are applicable here.

9. The view taken by the first Appellate Court that the said compromise decree in Regular Civil Suit No.227 of 1993 requires registration will have to be upheld. Since it was not registered, it could not have created any kind of title, interest in present appellant. After death of Chandrabhagabai, the property is liable to be partitioned. Accordingly, the partition decree has been passed and, therefore, no substantial question of law is arising in this case requiring admission of the second appeal. It deserves to be dismissed. Accordingly, second

appeal stands dismissed.

10. In view of dismissal of second appeal, Civil Application No.524 of 2021 stands disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm