

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 72 OF 2021

Nirmala Tatyrao Kadam and others ... Applicants

Versus

Raju Janardhan Dhivar and others ... Respondents

....

Mr. D. P. Palodkar, Advocate for applicants

Mr. V. M. Humbe, Advocate for respondent No.5

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CORAM : R. G. AVACHAT, J.

DATED : 04th OCTOBER, 2021

PER COURT :-

. Heard.

2. The challenge in this revision application is to the order refusing to reject the plaint. The suit has been filed by three brothers and two sisters for partition and separate possession of the agricultural lands specified in para one of the plaint.

3. The relief of declaration that the sale-deeds executed by their father (Defendant No.1) has no binding effect on their share, has also been prayed for.

4. Learned Advocate for the applicants herein would submit that the suit is barred by limitation, since for the relief of declaration, limitation of three years has been provided vide Article 58 thereof. He would further submit that the daughters who claimed to have right, title and interest in the suit land by virtue of Section 6 of the Hindu Succession (Amendment) Act, 2005, would not get a right in the suit land, since the lands have been sold under the registered conveyance before a date specified in the proviso to the said section. The valuation of the subject matter goes beyond Rs.5,00,000/- (Rupees Five Lakh) and thus, the Court of Civil Judge, Junior Division at Kannad has no pecuniary jurisdiction to entertain the said suit.

5. Considered the submissions. The suit has been filed way back in 2012. The written statement was also filed immediately thereafter. It is only in 2021, the application for rejection of the plaint was moved in a suit for partition of joint family property, which has been sold by the father. The plaintiffs/members of the joint family need not seek any declaration for setting aside of such alienation. It is for the purchaser to prove that the sale is for legal

necessity or for benefit of estate of the joint family. Here, the plaintiffs have unnecessarily prayed for a relief of declaration that the sale deeds are not binding on their share. Plaintiffs 1 to 3 are said to have attested the sale-deeds executed by their father and therefore, they are sought to be estopped. It is known legal proposition that an attesting witness is not supposed to know the contents of the document, he attests.

True, the plaintiffs No. 1 to 3 might be knowing of the contents in the sale-deeds. Whether they had really authorised their father to execute the sale-deed/s on their behalf or whether the father executed it for the legal necessity or the benefit of estate, are the questions of fact to be decided on trial of the suit.

6. True, The plaintiff Nos. 4 and 5 being the daughters may not be entitled to claim share in the suit property by virtue of Section 6 of the Hindu Succession (Amendment) Act, 2005, since the suit property has been sold before the specified date prescribed in the proviso to said section. There is, however, one more aspect. By virtue of Section 29-A(i) of the Hindu Succession Act (Maharashtra amendment), these daughters may claim to have vested right in the joint family property. The said issue appears to have not been raised

in the application. Hence, the same will have to be decided on trial of the suit. So far as question of pecuniary jurisdiction of the trial Court is concerned, the value of the sale-deeds is around to Rs.9,62,000/- and if the share of the plaintiffs therein is worked out, it may go beyond Rs.5,00,000/-. Learned Counsel would submit, since the relief of declaration has been sought for, valuation would go beyond Rs.5,00,000/- and the Court of Civil Judge, Junior Division, has no pecuniary jurisdiction to entertain and try the said suit.

7. It is reiterated that it is a suit for partition and separate possession of the joint family property sold by the father in capacity as Karta. The trial Court may ignore other reliefs claimed in the suit. Suit for partition of agricultural lands is to be valued on assessment of Land Revenue. There is another aspect of the matter, the plaintiffs are not parties to the sale-deeds executed by the father. Valuation for the purpose of suit and for the purpose of jurisdiction is same. The Apex Courts Judgment in the case of ***Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors - AIR 2010 SC 2807***, held thus:-

“Court-fees Act (7 of 1870), S. 7 (iv)(c) – Court fee – Suit for declaration that sale deed executed by plaintiff’s father is null and void and for joint possession - Is not a suit for

cancellation of sale deed – Court-fee need not be paid on sale consideration mentioned in sale-deeds – Court-fee payable is computable under Section 7(iv)(c).”

8. A person who is not party to a registered sale-deed is not expected to pay Court fee at ad-valorem or on the value of the property comprised in the sale-deed. The plaintiffs herein may take umbrage of the said legal position.

In short,

- (i) It is a suit for partition of agricultural lands;
- (ii) Land has been sold by father;
- (iii) Whether sale is for legal necessity or benefit of estate is a question of fact;
- (iv) Burden to prove the same is on purchasers;
- (v) Plaintiffs signed the sale-deed/s as attesting witness/es, not as executant or consentors;
- (vi) Whether they had authorised their father to sell the land/s is again a question of fact;
- (vii) Suit for partition is to be valued as assessment of Land Revenue;
- (viii) Daughters may have right in the suit land/s by virtue of Section 29-A of the Hindu Succession Act;
- (ix) Prayer for relief of setting aside sale-deed executed by father, is not necessary, trial Court to ignore the same.

9. The Trial Court has rightly rejected the application. For all the aforesaid reasons, the Civil Revision Application therefore stands dismissed.

[R. G. AVACHAT, J.]

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