

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 184 OF 1993

- 1) Parmeshwar s/o. Namaji Pathade
Died through LR's
- 1(A) Vatsalabai Parmeshwar Pathade
Age 52 years, Occu. Agriculture
- 1(B) Govind Parmeshwar Pathade
Age 26 years, Occu. Agriculture
- 1(C) Ravi Parmeshwar Pathade
Age 21 years, Occu. Agriculture

All residence of Chor Jawala
Post Babulgaon Tq. And Dist.
Hingoli.

- 1(D) Archana Madhav Wable
Age 31 years, Occu. Household
R/o. Pimpri, Tq. Sengaoon,
Dist. Hingoli.
- 1(E) Savita Rameshwar Ranjave
Age 28 years, Occu. Household,
R/o. Bhokarkheda, Post Linga
Tq. Risod, Dist. Washim.

....Appellants

Versus

1. Omprakash s/o. Kishan Wable,
Age 19 years, Occu. Agriculture,
R/o. Borawadi, Tq. Hingoli.
2. Parmeshwar s/o. Kishan Wable,
Age 15 years, Minor, through
Guardian brother Plaintiff no. 1.
3. Kishan s/o. Limbaji Wable,
Age 40 years, Occu. Agriculture,
R/o. Borwadi, Tq. Hingoli.

....Respondents

Mr. A.S. Deshmukh, Advocate for appellants.
Mr. P.S. Agrawal, Advocate for respondents.

**CORAM
CLOSED ON**

**: ARUN R. PEDNEKER, J.
: 24/07/2023**

DELIVERED ON : 08/08/2023

JUDGMENT :

1) The present second appeal is admitted vide grounds Nos. IV, IX, X, XII and XIII of the appeal memo vide order dated 28.6.1993, which were treated as substantial questions of law.

2) This Court by order dated 3.7.2023 asked the learned counsel for the appellant to file substantial questions of law in this matter. Thereafter, the learned counsel for the appellants filed substantial questions of law with advance notice to other side. Learned counsel Mr. Deshmukh for the appellants submits that the relevant substantial question of law in this appeal is - "Whether the document dated 30.6.1976 sale deed at Exh. 50 executed by Kisan defendant No. 1 in favour of plaintiff is nominal and without consideration and the same is hit by the provisions of section 54 of the Transfer of Property Act."

3) It is the contention of the learned counsel for the appellants that in the factual matrix of the case, there was no evidence as regards the plaintiff being minor, had any resources to purchase the suit property and as such, the sale by the father of the plaintiff in favour of the plaintiff is a nominal sale and decree could not have been passed in favour of the plaintiff as the sale deed in favour of the plaintiff is hit by section 54 of the Transfer of Property Act. The subsequent sale deed by the father of the plaintiff in favour of the defendant/appellant herein was a valid and lawful one and thus, the decree of eviction passed by both the Courts below is erroneous. The learned counsel submits that the substantial question that arises for consideration in this second appeal is, "Whether the sale deed in favour of the plaintiff by the father of the plaintiff is nominal one and no right flew

from the sale deed dated 30.6.1976 by the father of the plaintiff in favour of his minor son ?". The learned counsel further submits that the above question of law is reflected on the grounds on which the second appeal is admitted. Advance notice of the above question of law is given to the respondent and the matter is taken up for final hearing.

4) Brief facts, giving rise to the present second appeal can be summarized as under :-

Plaintiff Nos. 1 and 2 are real brothers and the defendant No. 1 Kisan is their father. Kisan was addicted to drinking liquor and therefore, the mother of the plaintiffs and their uncle had demanded partition from the father of the plaintiff, who had refused to partition family properties. Thereafter, the defendant Kisan disposed of some of the properties of the joint family. Constrained with difficulty of losing the properties, the plaintiff Nos. 1 and 2 purchased the property from the father of plaintiff for consideration of Rs.3,000/- on 30.6.1976 by execution of registered sale deed. Consideration was paid by the mother of the plaintiffs and their uncle. The plaintiffs were put in possession of the property and the uncle of the plaintiffs was cultivating the same.

5) Defendant No. 1 Kisan thereafter sold the same property on 30.3.1977 to defendant No. 2. Although the sale was executed in favour of defendant No. 2, possession of the property was not handed over to defendant No. 2. The plaintiffs continued to cultivate the property and mutation entry was also immediately carried out after the sale deed. No attempts were made by the defendant No. 2 to mutate their name in the revenue record. In the year 1981 the defendant No. 2 brought his name in cultivation column i.e. on 7.6.1991 and the defendant/appellant herein

dispossessed the plaintiffs from 5 Acres of area allegedly purchased by the plaintiffs.

6) The plaintiffs thus filed the suit for possession of the suit property. The plaintiffs claimed declaration that the sale deed dated 30.7.1977 be declared as void and not binding on the plaintiffs and the plaintiffs prayed for possession of the suit property admeasuring 2 H. as described in the plaint and for mesne profits.

7) The Trial Court on consideration of the pleadings formulated following issues and rendered findings thereon as under :-

No of Issues	<u>Issues</u>	<u>Findings</u>
1)	Do the plaintiffs prove that they were owners in possession of the suit land till their dispossession by deft. no. 2 ?	Proved.
2)	Do the pltffs. prove that deft. no. 2 dispossessed them on 7.6.81 ?	Proved.
3)	Do the pltffs. prove that deft. no. 1 evicted bad habits of liquor ?	Not proved.
4)	Do plffs. prove that sale-deed executed by deft. no. 1 in favour of deft. no. 2 is void and not binding ?	Yes Proved.
5)	Whether are pltffs. Entitled for declaration as prayed for ?	Yes.
6)	Whether the pltffs. are entitled for recovery of possession of suit land ?	Yes.
7)	Whether the pltffs. are entitled for future mesne profits ?	Yes.
8)	Does the deft. no. 2 proves that sale-deed executed by deft. no. 1 in his favour is for legal necessity ?	Not Proved.
9)	Does the deft. no. 2 proves that he made an improvement in the disputed suit field by constructing a well in it for improving the quality and fertility of the suit field and had in averred Rs.7000/- towards its construction ?	Not Proved.
10)	What order and decree ?	As per final order

8) The Trial Court held that the plaintiffs have proved that they are owners and possessors of the suit land till they were dispossessed on 7.6.1981. However, the Trial Court also held that the plaintiffs could not prove that defendant No. 1 had bad habit of liquor. The plaintiffs also proved that the sale deed executed by defendant No. 1 in favour of defendant No. 2 is void and not binding. In view of the findings that sale deed executed by the defendant No. 1 in favour of the defendant No. 2 is void, the issue of legal necessity did not arise for consideration, however, issue was framed and answered against the defendants. The Trial Court thus decreed the suit.

9) In appeal filed by the appellant/defendant No. 2, the Appellate Court formulated following points for determination and rendered it's findings thereon as under :-

	Points	Findings
1.	Do plaintiffs prove that sale-deed Executed by Deft. No. 1 Omprakash in favour of their mother and uncle is binding on deft. No. 2 appellant Parmeshwar ?	Yes.
2.	Do Plaintiffs prove that they had received possessin of the suit property and defendant No. 2 appellant Parmeshwar had dispossed them ?	Yes.
3.	Do plaintiffs prove that the sale deed executed by Deft. No. 1 Kishan in favour of Defendant No. 2 appellant Parmeshwar is void and not binding on them as Deft No. 1 Kishan had no authority to execute sale deed and for want of permission from District Court ?	Yes.
4.	Does deft. No. 2 Parmeshwar prove that Deft. No. 1 had executed sale deed in his favour for legal necessity ?	No.
5.	Does deft No. 2 prove that he has made improvement and dug a well in suit field ?	No.
6.	Whether the plaintiffs-Respondents are	No.

entitled to claim partition alternatively and as per notional partition S. No. 72 can be deemed to have been allotted to plaintiffs ?

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| 7. | Does defendant No. 2 prove that he is a bonafide purchaser for value without notice ? | No. |
| 8. | Whether the Judgment and decree passed by lower court on 22-4-85 is legal and proper one ? | Yes. |
| 9. | What order ? | As per order below. |

10) The Appellate Court dismissed the appeal filed by the appellant. Aggrieved thereby the appellant has filed the present second appeal. It is the contention of the appellant that the sale deed in favour of the minors is hit by section 54 of the Transfer of Property Act as it is without consideration and as such, no decree should have been lawfully granted on the basis of sale deed in favour of the minor. The learned counsel relied upon the judgment in the case of **Kewal Krishan Vs. Rajesh Kumar & Ors. etc. in Civil Appeal Nos. 6989-6992 of 2021 decided on 22 November, 2021** to support above contention.

11) In the case of **Kewal Krishan**, relying upon section 54 of the Transfer of Property Act, the Hon'ble Supreme Court has held that in absence of any source of income of minors to pay the consideration under the sale deed, the sale deed is hit by section 54 and no legal effect follows from the same. However, in the facts, situation of the case of **Kewal Krishan** the Hon'ble Supreme Court has held as under :-

"14. Admittedly, there is no evidence adduced on record by Sudarshan Kumar that his minor sons had any source of income at the relevant time and that they paid him consideration as mentioned in the sale deed. Similarly, no evidence was adduced to show that Sudarshan Kumar's wife had any source of income and that she paid

consideration mentioned in the sale deed. An issue was specifically framed by the Trial Court on the validity of the sale deeds. There is a specific finding recorded by the District Court that there was no evidence adduced to show that Sudarshan Kumar's wife and minor children paid consideration as shown in the sale deeds. In fact, before the District Court, it was pleaded that Sudarshan Kumar's wife had brought some money from her parents. The District Court in paragraph 11 of the judgment held that no evidence was adduced to prove the said contention. Therefore, there is a categorical finding recorded in the same paragraph by the District Court that Sudarshan Kumar, by taking advantage of the power of attorney, transferred the suit lands to his own minor sons and his wife without any consideration. The High Court has not disturbed the finding recorded by the District Court regarding the failure of the respondents to adduce evidence regarding the payment of consideration under the sale deeds dated 10th April 1981. The High Court in paragraph 29 merely observed that the sale consideration of Rs.5,500/- and Rs.6,875/- was not exorbitant and was not out of reach of Sudarshan Kumar's sons and wife. Perhaps, the High Court has ignored that it was considering a case of sale deeds of the year 1981 and that the purchasers under one of two sale deeds were minor sons of Sudarshan Kumar and it was not even pleaded that they had any source of income. The same is the case with the sale deed executed by Sudarshan Kumar in favour of his wife. Thus, undisputed factual position is that the respondents failed to adduce any evidence to prove that the minor sons had any source of income and that they had paid the consideration payable under the sale deed. They did not adduce any evidence to show that Sudarshan Kumar's wife was earning anything and that she had actually paid the consideration as mentioned in the sale deed.

15. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:

"54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the

seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

12) Perusal of section 54 of the Transfer of Property Act would indicate that the sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.”

13) In the instant case, the Appellate Court has rendered finding in para No. 7 as under :-

“...More over in support of evidence of plaintiff Omprakash, the evidence of Vishwanath who is a cousin of plaintiff is also adduced and the evidence of Vishwanath (PW. 2) shows that he had signed the sale-deed as a guardian of plaintiff and the sale deed was executed in his presence and the entire suit field was purchased for the amount of Rs.3000/- by plaintiff from defendant No. 1 Kishan. It is also in the evidence of Vishwanath (PW. 2) that the amount of Rs.2500/- was paid to defendant No. 1 at the house of plaintiff while the rest of consideration i.e. Rs.500/- was paid before the Sub Registrar at the time of registration and one Tukaram Bos the another attesting witness. Gyandeo (PW. 3) also testified that the sale deed (Exh. 50) bears his signature as an attesting witness and the entire suit field was sold by Defendant No. 1 Kishan to the plaintiff for the amount of Rs.3000/-. Gangadhar (PW. 4) also supported the version of plaintiff

and testified that the sale deed (Exh. 50) was executed in his presence on 30-6-76 in respect of suit field 14 between plaintiff and defendant No. 1. In the cross examination the said Gangadhar (PW.4) has given admission that the sale deed of the entire suit field was executed in the name of plaintiff in order to prevent defendant No. 1 Kishan from selling it to others but it is the case of the plaintiffs that their father was addicted to drinking liquor and he had bad vices and he was about to dispose of the property and therefore the plaintiffs had purchased the suit field from their father defendant No. 1 Kishan.....”

14) The evidence of PW 2 shows that the mother of the plaintiff had signed the sale deed as guardian of the minor and the sale deed was executed in his presence. PW 2 had paid consideration of Rs.2500/- to defendant No. 1 at the house of plaintiff and the rest of consideration of Rs.500/- was paid before the Sub Registrar at the time of registration of the sale deed and there were witnesses for the same. The evidence of PW 2 shows that the consideration amount was paid by Gangadhar to PW 2 and mother of the plaintiff and Gangadhar is maternal uncle of the plaintiff. Thus, the money in the instant case came from the maternal uncle of the minor and thus, the sale deed is not hit by section 54 of the Transfer of Property Act. Thus, the question of law raised in this appeal is answered against the appellant. In the result, the second appeal is dismissed.

15) After the pronouncement of the judgment, the learned counsel for the appellant prays for continuation of the interim relief, which was granted earlier. Interim relief granted during the admission of the appeal shall continue for the period of eight weeks from today.

[ARUN R. PEDNEKER J.]