



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

910 CRA NO.139 OF 2019
WITH CA/10679/2023 IN CRA/139/2019

**GANESH SAMPATRAO KENDRE AND OTHERS
VERSUS
SHOBHA DEEPCHAND RATHI AND OTHERS**

...
Advocate for Petitioners/Applicants : Mr. Nagargoje Ankush N.
Advocate for Respondent No.1 : Mr. Bora Satyajit S.
...

**CORAM : S. G. MEHARE, J.
DATE : 01.12.2023**

PER COURT :-

1. Heard the learned counsel for the applicants and the learned counsel for the respondents.
2. Respondent No.1 Shobha Rathi had filed a suit for partition. She was the daughter of the deceased, who had alienated the suit land before 20.12.2004 to respondents/defendants Nos.3 and 4. Subsequently, defendants Nos.3 and 4 alienated the suit land to the present petitioners/applicants.
3. The present applicants had moved an application under Order VII Rule 11 of the Civil Procedure Code based on the judicial pronouncement of the Supreme Court in the case of

Prakash and others Vs. Phulavati and others ; 2016 (1) Mh.L.J.

1.

4. Learned counsel for the applicants would submit that the view of *Phulavati's* case is still not disturbed by any other judicial pronouncement. Therefore, the suit of the plaintiff was not tenable and the plaint is liable to be rejected.

5. Per contra, learned counsel for the contesting respondent Mr. Bora would submit that recently the Hon'ble Supreme Court in case of ***Vineeta Sharma Vs. Rakesh Sharma and others ; 2020 (9) SCC 1***, answered the reference in paragraph No.129 in Clause (ii) which reads thus ;

“129.

(i)

(ii) *The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.”*

6. He also relied on the case of ***Rambhau S/o Gopinath Lokhande and another Vs. Shila w/o Satish Surwase and others ; Second Appeal No.674 of 2018 with Civil Application No.11434 of 2017 in SA.674 of 2018, dated 11.02.2022.***

7. In the above case, in paragraph No.14, it has been held that, “In my considered view, the proviso to Section 6(1) of the Hindu Succession Act does not have and cannot be interpreted to put any prohibition on the power of a coparcener including a daughter, who has been elevated as a coparcener, of putting up challenge to such alienations made prior to such amendment which have been hitherto available to a son to question those on the ground of want of legal necessity, which challenge he has been entitled to put up under the personal law applicable to the parties. This would bring about a harmony between the two concepts of saving the challenge to the alienations made prior to 20.12.2004 as also right of a coparcener to challenge the alienations made by the *Karta* or the Manager on the ground of want of legal necessity. Such a right now would be available even to a daughter. If the proviso is to be interpreted to mean that a coparcener particularly the daughter has no power to challenge the alienations effected prior to 20.12.2004 it would be clearly inconsistent with the personal law. No such interpretation can be accepted.”

8. The proviso of Section 6 of the Hindu Succession Act protects the interest of the purchaser. However, the co-parcener has always a right to prove the legality and validity of such

transfer. It has been seen in many cases that to deprive the daughters from share, the joint family properties have been sold deliberately. Though said proviso protects the interest of the purchaser that does not prohibit the coparcener from exercising their personal rights.

9. Learned counsel for the applicants is also correct. There may be a possibility of collusion to deceive the purchaser. There is always a dispute on the fact. In this case there were disputes on facts. The settled rule of law is that the fact finding, Court has to test the legality and validity of the transactions and violation of the rights of the parties involved in such suit is violated. Therefore, the Court is of the view that though the suit property was alienated before December 20, 2004, proviso to Section 6 (1) of the Hindu Succession Act, does not bar the suit of the plaintiff. Having agreed with a view taken by the Co-ordinate Bench of this Court in the case of *Rambhau Lokhande (supra)*, the plaint cannot be thrown at threshold only on the basis that the sale transaction was before 20.12.2004. No litigant shall be denied to put up his or her case and seek the rights if violated. This Court does not find any substance in the submissions of the learned counsel for the petitioners/applicants. The order rejecting application under

Order VII Rule 11 of Civil Procedure Code is legal, proper and correct and does not warrant interference. Hence, the following order :

ORDER

- (i) Civil Revision Application stands dismissed.
- (ii) No order as to costs.
- (iii) The suit is expedited as the application under Order VII Rule 11 was filed at the stage of the evidence.
- (iv) Both parties to co-operate the Court to get the suit decided expeditiously.
- (v) Civil Application stands disposed of.

(S. G. MEHARE, J.)

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vmk/-