

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 411 OF 2021**

Ravindra C. Khopade

...Appellant

Versus

Dnyaneshwar V. Hargude & ors.

...Respondents

WITH

INTERIM APPLICATION NO. 1325 OF 2021

Mr. Rakesh Sharad Patil a/w. Mr. V.V. Tapkir and Mr. V.D. Tapkir for the Appellant.

Mr. Vishal Kale i/b Mr. Prashant Shinde and Mr. Sunil D. for the Respondent.

**CORAM: N. R. BORKAR, J.
DATE: 22 AUGUST 2023.**

PC:-

1. The appellant herein/original plaintiff had filed a Suit for declaration and other consequential reliefs. The Suit was filed alleging that by Sale-Deed dated 18 February 2012, the original defendant Nos.2 to 4 had sold their share in the suit property to original defendant No.1 in violation of the preferential right conferred on the appellant/plaintiff under Section 22(1) of the Hindu Succession Act, 1956.

2. The trial Court decreed the Suit by the judgment and decree dated 6 February 2019. The operative order of the judgment and decree passed by the trial Court reads thus:

- “1) Suit is decreed with proportionate costs.*
- 2) It is hereby declared that sale deed executed by defendant No.2 to 4 in favour of defendant No.1 vide document No.1788/12 dated 18/02/2012 is null, void and no binding upon plaintiff.*
- 3) Plaintiff is directed to pay amount of Rs.50 Lakhs along with interest at the rate of 12% p.a. from 18/02/2012 to defendant No.1 within a period of two months from passing of this order.*
- 4) Defendant no.1 is directed to execute sale deed of suit properties in favour of plaintiff after accepting above mentioned amount.*
- 5) If defendant no.1 fails to execute sale deed in favour of plaintiff, it can be executed by appointing Court Commissioner.*
- 6) Defendants, their servant, agents or any other persons acting on their behalf are hereby perceptually restrained from causing any kind of obstruction to the plaintiff over his possession of suit property*
- 7) Decree be drawn be accordingly.”“*

3. Two appeals were filed against the judgment and decree of the trial Court. One appeal was filed by the original defendant No.1 questioning the entire decree. The other appeal was filed by the appellant/plaintiff against that part of the decree by which he was directed to pay the interest at the rate of 12% per annum.

4. The appellate Court by common judgment and order dated 4 May 2021, which is impugned in this second appeal, has allowed the appeal filed by the defendant No.1 and dismissed the appeal filed by the appellant/plaintiff. The operative order of the judgment and order passed by the appellate Court reads thus:

“ORDER

- 1] Civil Appeal No. 123/2019 filed by the defendant No.1 is allowed.
- 2] Civil Appeal No. 128/2019 filed by the plaintiff stands dismissed.
- 3] The impugned judgment and decree passed by the 5th Jt. Small Causes Court, Pune in Spl. Civil Suit No. 403/2012 stands quashed and set aside.
- 4] Spl. Civil Suit No. 403/2012 stands dismissed.
- 5] Parties to bear their own costs.
- 6] Decree be drawn up accordingly.
- 7] Original judgment be kept in Civil Appeal No.123/2019 and its copy be kept in Civil Appeal No. 128/2019.”

5. I have heard the learned counsel for the appellant/plaintiff and perused the findings of the appellate Court.

6. The findings recorded by the appellate Court read thus:

“17] The defendants have come up with a specific case that before the transaction between them, the plaintiff was aware about the intention of the defendant Nos.2 to 4 to sell the suit lands. It is worth to be noted that this contention of the defendants is not denied by the plaintiff. On the contrary, in the plaint itself he has come up with a case that defendant Nos. 2 to 4 were pressurizing him by saying that we will sell the suit lands. He has further contended that he told them that unless the suit lands are partitioned by metes and bounds, the defendant Nos.2 to 4 cannot sell the suit lands. In the cross-examination, plaintiff has clearly admitted that he was aware that the defendant Nos.2 to 4 are going to sell the suit lands. Like, the provision in Rajasthan Preemption Act, no such provision is brought to my notice by the plaintiff which obliges the vendor to give prior notice to the cosharer calling upon him his willingness to purchase the share. So, from the plaintiff's case itself it becomes clear that the plaintiff was

well aware that the defendant Nos.2 to 4 are going to sell the suit lands. The defendant Nos.2 to 4 have come with a specific case that the plaintiff had assured them that he will not raise objection to the sale transaction. In the cross examination of the defendant No.4 Seema, the plaintiff has brought on record that such discussion was taken place in the office of advocate Tapkir. Worth to be noted that this statement of the defendant is not challenged by the plaintiff.

... ..

19] The defendants have come up with a specific case that the plaintiff was insisting them to relinquish their share in the suit lands and for that he had got prepared relinquish deeds and was insisting them to sign those relinquish deeds. The defendants have placed on record relinquish deeds at Exhs.57/3 & 4. It should be noted that the plaintiff is the only male family member. It has come on record that till the sale transaction, the plaintiff was cultivating the suit lands. The plaintiff has admitted that stamps of relinquish deeds filed along with List Exhs.57/3 & 4 are purchased by him. He also admits that the relinquish deeds are signed by the defendant No.3 Kamal. The plaintiff admits that there were disputes between him and the defendant Nos.2 to 4 about the suit lands and meeting was held to settle that dispute. Purchasing stamps and getting prepared relinquish deeds by the name of defendant Nos.2 to 4 by the plaintiff leads to say that being only male member, the plaintiff was intending to deprive the defendant Nos.2 to 4 from their shares in the suit lands. To grab the suit lands, the plaintiff did not come forward to purchase the suit lands. Considering all these aspects, I am of the opinion that the plaintiff has waived his preferential right to purchase the suit lands. Sec.44 of the Transfer of Property Act empowers the cosharer to sell his share in the joint property. Therefore, finding given by the trial Court that the defendant Nos.2 to 4 had no authority to sell the suit lands is erroneous. It is undisputed that the defendant No.1 has purchased the suit lands for valuable consideration for Rs.Fifty lacs. In such circumstances, the trial Court has committed grave error in holding that the sale deeds are sham and bogus. Accordingly, I answer point No.1 in the negative.”

7. The appellate Court has recorded a specific finding that the appellant/plaintiff was insisting the defendant Nos.2 to 4 to sign the relinquishment deeds which were prepared by him. The said finding is not shown to be perverse. The intent of the appellant/plaintiff is thus apparent and it was to deprive the defendant nos.2 to 4 of their share without paying any consideration instead of purchasing the suit property in terms of Section 22 of the Act.

8. Even otherwise, the appellant to show his *bona fides* ought to have deposited sale consideration as directed by the trial Court. In absence of such *bona fides*, no interference is called for in the impugned judgment and order passed by the appellate Court. In the result, the Second Appeal is dismissed.

9. The Interim Application stands disposed of.

(N. R. BORKAR,J.)