

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 706 OF 2018
WITH
CIVIL APPLICATION NO. 1593 OF 2018

Shakuntala Bhimrao Nikam
since deceased through legal heirs
Bhimrao Yashwant Nikam & Ors.

...Appellants

Versus

Raghunath Ganpati Basugade
since deceased through legal heirs
Draupadi Raghunath Shinde & Ors.

...Respondents

Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare, for the Appellants.

Mr. Yuvraj Narvankar, for Respondent No.3.

CORAM : MADHAV J. JAMDAR, J.

DATED : 15th JUNE 2023

P.C. :

1. Heard Mr. Pradeep Thorat, learned counsel appearing for the Appellants and Mr. Yuvraj Narvankar, learned counsel appearing for Respondent No.3. Although other Respondents are served, none appears for the other Respondents.

2. A learned Single Judge by order dated 24th February 2020 framed the following substantial questions of law and issued notice for final disposal at the admission stage. The said substantial questions of

law framed by order dated 24th February 2020 are as follows:-

“(A) Whether in absence of execution of any Relinquishment Deed by the original plaintiff it can be held that she has relinquished her share in the suit properties in favour of the Respondent ?

(B) Whether there can be extinguishment of rights of the Plaintiff in the immovable properties by way of alleged oral understanding between the parties?

(C) Whether a daughter of a male Hindu i.e. Plaintiff can be said to be disentitled to share in the joint property only on the ground that the said properties are ancestral properties and not co-parcenary properties ?

(D) Whether the property inherited by the Plaintiff and Defendant from their father Ganpati can be said to be co-parcenary property so as to exclude the Plaintiff from having her own separate share in view of the fact that Ganpati was the only son of Grandfather i.e. Dattu and after demise of Dattu all his properties are inherited by Ganpati and hence there was no question of existence of a co-parcenary?”

3. Appellants are the heirs of original Plaintiffs. Mr. Thorat, learned

Sonali

counsel appearing for the Appellants submitted that Plaintiff is the sister and the Respondent No.1-Raghunath is the brother. He submitted that therefore, Plaintiff-Shakuntala was entitled for 50% share in the suit properties. He pointed out the finding of the learned Trial Court as well as the learned Appellate Court to the effect that as Plaintiff has received certain amount from the mother, orally she has relinquished her rights in the immovable property. Therefore, in view of oral family settlement, she is not entitled to the share. He submitted that certain properties are purchased by Ganpati i.e. the father of Plaintiff and Defendant No.1 and therefore, they are the self acquired properties of said Ganpati. He further submitted that some of the properties came to Ganpati's share out of ancestral properties and therefore, all the suit properties are the properties of said Ganpati. He submitted that said deceased Ganpati has not executed any Will and therefore, after his death and after the death of mother-Tanubai, both Shakuntala i.e. the Plaintiff and Raghunath i.e. Defendant No.1 are entitled for 50% share each.

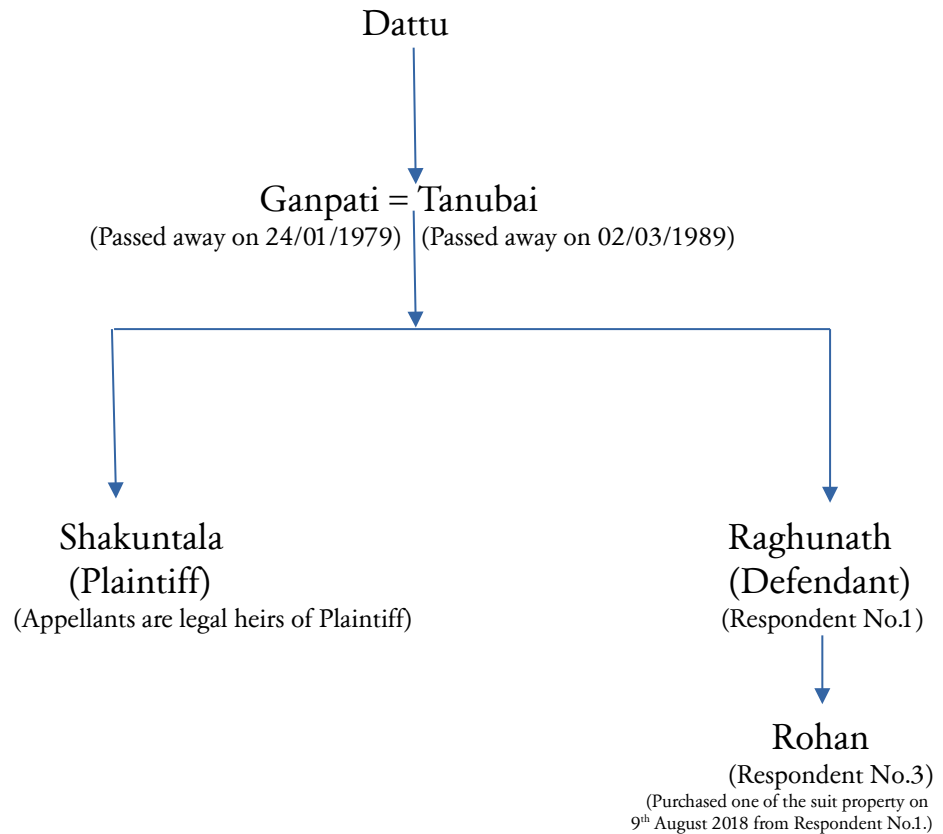
4. Mr. Narvankar, learned counsel appearing for Respondent No.3, who is the purchaser submitted that the evidence on record show that

Sonali

as per the oral family arrangement in lieu of receipt of certain money, Shakuntala had relinquished her right in the suit properties. He submitted that both the Courts have recorded the finding of fact by holding that there is oral family arrangement regarding relinquishment, and therefore, dismissed the suit as well as the appeal. He submits that there is concurrent finding of fact that properties are the joint family properties and there is oral relinquishment. He submitted that in view of relinquishment or release of share, the Plaintiff has been compensated by mother. However, he fairly admitted that there is no written document recording this.

5. Mr. Narvankar, learned counsel appearing for the Respondent No.3 alternatively submitted that if this Court comes to the conclusion that as the said relinquishment or release is not by execution of any document, then atleast in the final decree proceedings while partitioning the properties by metes and bounds, attempt be made to allot property at Serial No. (a) to the share of the vendor of the Respondent No.3 i.e. Respondent No.1-Raghunath.

6. Before considering the rival contentions, it is necessary to set out the family tree:-



7. There are total four suit properties, which are set out hereinbelow for ready reference:-

- a) Land Survey No.354/1, adm. 470 sq. mtrs. CTS No.22/9823, 23/9824, 24/9825, 25/9826, 26/9827, 27/9828 & 28/9829 situated at Sangli along with structure on 1/4th portion of plot. **(New Sr. No.341/1-sold to Respondent No.3 by the Respondent No.1 after dismissal of Appeal)**
- b) Land CTS No.1078B adm. 84.7 sq. mtrs. along with structure situated at Sangli.
- c) Land Survey No.320/4A1 adm. 554.75 sq.mtrs.

Sonali

situated at Pailwan Society, Mauje Kupwad, Miraj, Sangli.

d) Land CTS No.1462 adm. 28.6 sq. mtrs. and CTS No.1463 adm. 20.1 sq. mtrs. situated at Kasbe Ashta, Taluka- Islampur, Sangli.

8. The Respondent No.3 purchased the suit property at Serial No. (a) above from the Respondent No.1 by registered Sale Deed dated 9th August 2018. It is the contention of Mr. Thorat that certain properties are ancestral properties and came to the share of Ganpati and certain properties are his self acquired properties. It is the contention of Mr. Thorat that properties at Serial No.(a), (b) and (c) are the self acquired properties of Ganpati and property at Serial No.(d) is inherited by him from his father. Therefore, he submitted that all the properties are the properties of Ganpati. It is the contention of Mr. Narvankar that the properties are the joint family properties.

9. However, in this case, very important point involved is whether the right to the immovable properties can be given up by oral relinquishment or oral release. It is admitted position that even as per the contention of the Respondents, Plaintiff-Shakuntala has share in the suit properties. The only contention raised is that Shakuntala has received certain monetary consideration and therefore, she has orally

either relinquished or released her share in the suit properties.

10. Mr. Thorat, learned counsel appearing for the Appellants relied on the decision of the Supreme Court in the matter of **Yellapu Uma Maheswari & Anr. vs. Buddha Jagadheeswararao & Ors.**¹ In the said decision of the Supreme Court after considering Section 17 and Section 49 of the Registration Act, it has been held that Section 17(1) (b) of the Registration Act mandates that any document which has effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Act. Mr. Thorat has relied on paragraphs 13 to 16 of the said decision. Thus, it has been held that in case of relinquishment of right in respect of immovable properties through the document, it has to be compulsorily registered and if same is not registered, Section 49 of the Registration Act imposes bar on the admissibility of an unregistered and unstamped document. It has been further held that such unregistered document can be used for some collateral purposes. In

¹ (2015) 16 SCC 787

paragraph 16 of the said decision, some collateral purposes are specified. The said paragraph 16 reads as under:-

“16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy has held that the **whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.** Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”

(Emphasis added)

11. It has been held that the said collateral purposes in case of

process of partition are severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. It has been further held that unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.

12. In the present case, admitted position is that the alleged family agreement is oral agreement. Admittedly there is no written family arrangement or no document of such relinquishment or release. Therefore, there is substance in the substantial questions of law Nos. (A) and (B) raised by the Appellants and the same are answered in favour of the Appellants.

13. As far as the substantial question of law (C) and (D) are concerned amended Section 6 of the Hindu Succession Act, 1956 as interpreted by the Supreme Court in the decision of **Vineeta Sharma vs. Rakesh Sharma & Ors.**² supports the contention of the Appellants. In any case, even if it is assumed that the properties are exclusive properties of Ganpati, then also both Plaintiff and Defendant No.1 will have equal share in the suit properties as per Section 8(a) of the Hindu

2 (2020) 9 SCC 1: 2020 SCC OnLine SC 641

Succession Act, 1956. Therefore, the substantial question of law (C) and (D) are also required to be answered in favour of the Appellants.

14. Accordingly, in the light of above discussion, the impugned Judgment and Decree passed by the learned 2nd Joint Civil Judge, Senior Division, Sangli in Special Civil Suit No.431 of 1994 dated 27th July 1999 as well as Judgment and Decree passed by learned District Judge-3, Sangli dated 28th March 2018 in Regular Civil Appeal No. 221 of 2012 is quashed and set aside. The Special Civil Suit No.431 of 1994 is decreed in favour of the Appellants-Plaintiff by declaring that the Plaintiff and the Defendant have half share in the suit properties and they are entitled to get partition of the suit properties at Serial Nos. 1(a) to 1(d) of the plaint in equal share by metes and bounds.

15. It is the contention of Mr. Narvankar, learned counsel appearing for Respondent No.3 that, Respondent No.3 has purchased the suit property described in paragraph 7(a) from the Respondent No.1 i.e. original Defendant, who has 50% share in the suit property and therefore, while carrying out partition by metes and bounds, the suit property described at paragraph 7(a) be allotted to the share of the Respondent No.1 i.e. vendor of the Respondent No.3. The said prayer

Sonali

of the Respondent No.3 be considered by the Court in the Final Decree proceedings and, if possible, suit property described in paragraph 7(a) be allotted to the share of Respondent No.1 -Raghunath i.e. vendor of the Respondent No.3. However, it is further clarified that contentions of both the parties regarding allotment of property at paragraph No.7(a) described above i.e. paragraph No.1 (a) of the plaint in the share of Respondent No.1 are kept open and the said question will be decided in the final decree proceedings.

16. Accordingly, the Second Appeal is allowed in above terms with no order as to costs.

17. In view of the disposal of the Second Appeal, nothing survives in the Civil Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]