

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 115/2022

Shakun Manikrao Darote .vs. Shukrachari Eknath Telang

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Ayushi D. Mishra, Advocate holding for Mr. S. D. Chande, Advocate for appellant.
Mr. V. K. Paliwal, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 17.07.2023

Heard.

2. The appellant/original defendant has preferred the present appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the, 'Code'), taking exception to the judgment and order dated 12.02.2021 passed by learned Incharge District Judge – 12 in Regular Civil Appeal No. 245/2018, dismissing the appeal and confirming the judgment and decree dated 23.02.2018 passed by the learned 6th Jt. Civil Judge Senior Division, Nagpur in Special Civil Suit No. 724/2015 (Old Regular Civil Suit No.145/2009). The parties will be referred to by their original nomenclature for the sake of convenience. Thus, the defendant is before the Court against concurrent finding recorded by both the Courts below.

3. The plaintiff had filed a suit for declaration, eviction, possession and damages. The subject matter of the suit is house constructed on plot no. 5, Khasra No. 32/A admeasuring 1500 Sq. Ft. at mouja Manewada, district Nagpur (hereinafter referred to as the 'Suit Property'). The plaintiff pleaded that he has purchased the suit property on 14.07.1999 from Taj Krupa Gruhanirman Sahakari Sanstha Maryadit, Nagpur. The plaintiff had thereafter constructed the house thereon. The plaintiff was in service with Nagpur District Central Cooperative Bank Ltd. Nagpur. His job was a transferable job. He appointed one Kunta Uddhav Katkar as Caretaker. The plaintiff has then alleged that Kunta pretended herself to be the wife of the plaintiff and has attempted to sell the properties of the plaintiff. The plaintiff lodged report with police station and First Information Report came to be registered. The plaintiff has also filed civil suit bearing Regular Civil Suit No. 423/2008 against Kunta Katkar for declaration, permanent and mandatory injunction which suit is still pending. It is then alleged that Kunta is absconding.

4. It is further the case of the plaintiff that he was due to retire and decided to settle at Nagpur. He visited the suit property in the month of July, 2008 and noticed that the defendant was in possession of the suit property. On inquiry, the defendant told the plaintiff that she was put in possession by Kunta. The plaintiff then informed the defendant about the factual scenario and asked her to vacate the suit property. The defendant, initially, sought

some time but later refused to vacate. The plaintiff, then on 09.10.2009 lodged report with Police Station, Ajni but the police did not take action against the defendant on the ground that the dispute was of civil nature. Accordingly, the suit came to be filed.

5. The defendant resisted the suit by filing written statement. The defendant averred that Kunta was legally wedded wife of plaintiff and their marriage was solemnized on 29.03.1993 at Government Hospital, Wani. The defendant further pleaded that out of the wedlock, they have two children, a daughter and a son namely Trupti and Vishal respectively. The defendant then put up a case that the plaintiff had executed a registered gift deed in favour of Kunta on 15.04.2004 and has transferred the suit property in her favour. The defendant has further averred that the plaintiff has also executed a possession letter of suit property in favour of Kunta. According to the defendant, in the year 2001, plaintiff, his wife Kunta and two children and his mother were residing together in the suit property. At that time, the plaintiff has given a contract to one Ravi Sahare for minor repairs of the suit property. On 09.02.2001, the plaintiff has found that some valuables were stolen by said Ravi and therefore on 10.02.2001, he had lodged report against Ravi at Police Station, Ajni. In the said report, the plaintiff has allegedly mentioned that Kunta is his wife. The defendant then states that the plaintiff refused to maintain Kunta and therefore Kunta had initially inducted the defendant as tenant in the suit

property and later, on 17.08.2006, she sold the suit property to defendant for Rs.5,00,000/-. The defendant then alleged that the plaintiff has denied his relationship with Kunta and has filed this false suit in collusion with her. It is also the case of the defendant that the plaintiff is not owner of the suit property. Therefore, has no right to file the suit.

6. The plaintiff has examined two witnesses. PW1 is plaintiff and PW2 is Bhojraj Bante, the Secretary of Tajkrupa Gruhanirman Sahakari Sanstha Maryadit, Nagpur. The defendant has examined four witnesses. DW1 is defendant herself. DW2 is Rambhau Baraskar, Recovery Officer of Himalaya Sahakari Pat Sanstha, DW3 is Vijay Namotkar, Teacher of Kale Ashirwad High School and DW4 is Rajendra Ghuge, Police Sub Inspector.

7. The Courts below found that the plaintiff is owner of the suit property. He has purchased the suit property vide sale deed Exh.-59. The first appellate court also took note of evidence of DW3, Head Master of the School and the report Exh.-105 lodged against Ravi Sahare by the plaintiff, which indicates that Kunta was referred to as plaintiff's wife. The Court then considered the case, presuming that Kunta is/was wife of plaintiff and held that Kunta failed to prove ownership over the suit property on the basis of gift deed. In sequel, it is held that Kunta had no right to enter into agreement to sale with the defendant and to take a possession of the suit property.

8. The first appellate Court held that the pleadings of defendant at Exh.-59 would explicitly show that the plaintiff is owner of the suit property. The defendant's title is based of Kunta's ownership which allegedly has been transferred by way of gift deed, allegedly executed on 15.04.2000. The gift deed is said to be a registered document. The plaintiff, however led the evidence that no such document was ever registered with the Sub Registrar's office. The plaintiff had produced a letter written by him to the office of Sub Registrar seeking copy of the alleged gift deed. The Sub Registrar has, in response, communicated vide Exh.-109 that the alleged gift deed was not registered.

9. Thus, the Courts below have found, and rightly so, that the gift deed having been not registered, cannot be relied upon since the same was not in conformity with the provisions of the Registration Act, 1908, particularly Section 17, so also provisions of the Transfer of Property Act, 1882, particularly Section 122. Thus, the foundation of the defendant's claim of ownership through Kunta was found to be without any substance. The plaintiff's ownership over the suit property was held to be proved.

10. The learned counsel for the defendant has vehemently argued that both the courts below failed to recognize the ownership of Kunta over the suit property in terms of Section 14 of the Hindu Succession Act, 1956. According to her, there is no dispute that Kunta was in possession of the suit property.

11. Learned counsel for appellant submits that the suit property was given to Kunta in lieu of the maintenance and therefore she became owner of the suit property by virtue of Section 14 of the Hindu Succession Act, 1956. She further submits that when husband puts his wife in possession of the suit property, there is every reason to believe that the possession was so handed over to maintain her.

12. She has relied upon following judgments in support of her contention:

- (i) *Munni Devi Alias Nathi Devi (Dead) thr. LRs. & Ors. Vs. Rajendra Alias Lallu Lal (dead) thr. LRs. & Ors.*¹
- (ii) *T. S. Ganesan Vs. Smt. Parvatham Ammal and anr.*²
- (iii) *Anusuya Mallayya Vastrad and Ors. Vs. Mallayya Nagayya Vastrad.*³
- (iv) *Illoth Valappil Ambunhi (Dead) by LRs. Vs. Kunhambu Karanavan*⁴

13. The Apex Court has held that the Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained

1 2022 LiveLaw(SC) 515

2 2008-4-L.W.53

3 AIR 2016 Karnataka 201

4 (2020) 18 SCC 317

therefrom. It is also held that if a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. The Apex Court has also held that Section 14 (1) and the explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation. It is then held that where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee. Most importantly, the Supreme Court has held that possession of the widow, however, must be under some vestige of a claim, right or title.

14. I have gone through the judgments. The Apex Court, in each case has found that the possession of the subject matter of the property was given to the female in lieu of maintenance and that there was overwhelming evidence to that effect. This vital aspect/evidence is absent in the present case. Here, the defendant has come up with a case that Kunta acquired property through gift deed which defendant failed to prove. The theory of handing over the property in lieu of maintenance has been raised for the first time before this Court. There is absolutely no evidence either oral or documentary to suggest that the plaintiff had handed over possession of the suit property to Kunta in lieu

of maintenance. Rather, the defendant has put up a case, in cross-examination of the plaintiff, which is denied by the plaintiff, that Kunta had sold another plot situated at Khamla, belonging to the plaintiff. The defendant has further put up a case that the plaintiff used to purchase the plots and Kunta used to sell the same and used to hand over the consideration amount to the plaintiff. Thus, the case put up by the defendant would clearly indicate that the plot under question or plots referred to in the cross-examination were never given to Kunta in lieu of maintenance. In fact, the plaintiff has filed documents like FIR to show that he had lodged report against Kunta for making attempt to dispose of his property.

15. Thus, merely because Kunta was in possession of the suit property, one cannot presume that it was so given in lieu of maintenance. It appears that Kunta had made an attempt to create a document viz. Registered gift deed, which was found to be never registered before the Sub Registrar's office. Thus, the evidence led before the trial Court is indicative of the fact that Kunta had an evil eye on the properties belonging to the plaintiff and has made an attempt to sell his properties and in fact was successful in selling one of his properties viz. the suit property.

16. Learned counsel for the appellant/defendant has then invited my attention to the possession letter allegedly executed by the plaintiff in favour of Kunta. The same, however, having not been proved before the trial Court could not be read in evidence and therefore no benefit

could be drawn by the defendant through such a possession letter.

17. The sum and substance of above discussion is that the appellant failed to show that the conclusions drawn by the Courts below were perverse in the sense, were contrary to the mandatory provisions of the applicable law or were contrary to the law as pronounced by the Apex Court or is based on inadmissible evidence or no evidence. In other words, the appellant failed to show that substantial question of law arises in the present appeal. There is absolutely no merit in the appeal. The appeal is, therefore, dismissed in limine. No order as to costs.

(Anil L. Pansare, J.)

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