

4IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
SECOND APPEAL NO. 216 /2023

Shubhangi w/o Sudesh Khedikar	.. <u>Appellant</u>
versus	
Vijay Shankarrao Manapure and others	.. <u>Respondents</u>
.....	
Mr. S.PBhandarkar, Advocate for the appellant	
.....	

CORAM: ANIL L. PANSARE, J.
DATE OF CLOSING: 17.07.2023
DATE OF PRONOUNCEMENT:25.07.2023.

PC:

Heard Mr.S.P. Bhandarkar, the learned counsel for the appellant, at length.

2. The appellant/original plaintiff has filed this Appeal challenging the judgment and decree dated 09.12.2022 passed by learned *Ad-hoc* District Judge-5 in Regular Civil Appeal No.116/2017 dismissing the appeal and confirming the judgment and decree dated 11.02.2017 passed by learned 8th Joint Civil Judge, Sr.Dn. Nagpur in Special Civil suit No.43/2011. The substantial question of law put forth by the appellant, in essence, is as under :-

“ Whether the appellant is entitled for the benefit under Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act 2005 and is entitled for 1/5th share of the ancestral suit property of her parents?”

3. The appellant/plaintiff had filed a suit for partition and separate possession. The Respondent Nos.1 and 2/ original defendant nos. 1 and 2, are the brothers of the plaintiff, whereas Respondent Nos. 3 and 4 /original defendant nos. 3 and 4 are the sisters. The parties will be hereinafter referred to as per their status before the trial Court.

4. The disputed property consists of an ancestral house bearing Corporation House No.636 (Old No. 555), Ward No.45, at Bharatmata Chowk, Jagnath Budhwari, Nagpur and an agricultural land bearing Khasra No.39/1, admeasuring 13 Acres, situated at Mouza Adyali Tah. & Dist. Nagpur. These properties will be hereinafter referred to as “the suit property”.

5. It is the case of the plaintiff that the plaintiff and defendants are the only heirs of late Shankarrao Manapure, who expired on 18.08.1992. The mother of the plaintiff too left for her heavenly abode on 21.11.1992. The plaintiff on 18.12.2006 issued notice in favour of defendant no.2 seeking her share in the suit property. The defendant Nos.1 and 2 have replied the notice stating therein that suit property has already been partitioned vide registered partition deed dated 30.12.1992. The plaintiff alleged that neither she nor the defendant Nos. 3 and 4 have received anything under the partition deed as claimed by defendant Nos.1 and 2. The plaintiff stated that she is unaware as to where, when and how her signatures were obtained by the defendant Nos.1 and 2. According to the plaintiff, as on 30.12.1992, she was unmarried and continued to stay with the defendant Nos. 1 and 2 till her marriage which was solemnized on 19.05.1995. Therefore, there arises no question of partition being done prior thereto. The partition

deed is said to be a fraudulent document obtained by misrepresentation of facts to deprive the plaintiff and the defendant Nos. 3 and 4 of their respective legitimate shares in the ancestral property. It is further alleged that the document of partition has been obtained under the influence of defendant Nos. 1 and 2.

6. The cause of action for filing the suit has allegedly arose on 04.01.2007 when the defendant Nos. 1 and 2 have dashed off reply to her notice, refusing to give her share.

7. The issues framed by the trial Court with answers are as follows :-

- | | |
|---|---------------------------|
| 1. Do defendants prove that there took place partition of suit property on 19.12.1992 as pleaded by them? | Yes |
| 2. Is plaintiff entitled for share if yes? What would be her share and from which property? | No |
| 3. What order and decree? | As per final order |
| <u>Additional issue:</u> | |
| If partition proved, does plaintiff prove it as a fraudulent document? | No |

8. The plaintiff assailed the judgment and decree passed by the trial Court before the first Appellate Court. The issues/points for determination formulated by the first Appellate Court along with answers are as under :-

- Whether defendants/respondents prove that registered partition had been effected amongst the parties on 30.12.1992? **In the affirmative**

2. Do the plaintiff/appellant prove that partition of the suit property dated 19.12.1992 is a fraudulent document? **In the negative**
3. Is Plaintiff/appellant entitled for partition? If yes, what is her share? **In the negative**
4. Whether illegality done by the learned lower Court while passing decreed? **In the negative**
5. What order and relief? **As per final order**

9. Thus, both the Courts below have rendered a concurrent finding against the plaintiff, on the ground that the defendants have proved registered partition deed executed on 30.12.1992. In doing so, the first appellate Court relied upon the judgment in the case of **Prem Singh vs. Birbal : (2006) 5 SCC 353**, wherein the Hon'ble Apex Court has held that there is a presumption regarding registered document, that it is validly executed and that the onus of proof, thus, would be on a person who leads the evidence to rebut the presumption.

10. The first appellate Court has also taken into consideration the contradictory stand taken by the plaintiff, viz. the plaintiff has at one point feigned ignorance of registration of partition deed (Exh.67) by stating that she was not present when the document was registered, on the other hand, she stated that defendant Nos.1 and 2 have got the document registered under undue influence and coercion and she was forced to sign the partition-deed, the third stand taken by the plaintiff is that her signatures were obtained by defendant Nos. 1 and 2 by misrepresentation.

11. The first appellate Court has further noted that the partition deed was acted upon and the application for mutation of house was signed by the plaintiff. Further, the applications dated 11.03.1993 and 17.05.1994 tendered before the Tahsildar, seeking mutation of the agricultural land in revenue record, were also signed by the plaintiff.

12. The first appellate Court then noted that in the reply to notice (Exh.77), the defendant Nos.1 and 2 have referred to the registered partition deed dated 30.12.1992. Despite this, the plaintiff has filed the suit for partition without challenging the partition deed. The Court held that the plaintiff ought to have challenged the partition deed within three years of its execution. The Court noted that the plaintiff had not denied the execution of the document but has alleged that her signatures were obtained under undue influence and misrepresentation. The Courts below have further noted that neither is there any pleading nor evidence as required under the law (Order VI Rule 4 of the Code of Civil Procedure, 1908) in respect of the fraud, misrepresentation and undue influence, in the sense, the particulars as to how, where and when the fraud was committed or misrepresentation made or the manner in which the plaintiff was required to sign the document under influence, is absent.

13. One of the grounds raised by the plaintiff before the first Appellate Court was that the defendant no.4 has not signed the partition deed. The first Appellate Court has taken note of the power of attorney (Exh.68) executed by the defendant no.4 in favour of the plaintiff. The plaintiff has signed the partition deed for herself and as power of attorney holder of the defendant no.4.

14. Considering the entire evidence, both the Courts below have held that partition deed was effected amongst the parties in the year 1992 and accordingly, the suit as well as appeal came to be dismissed.

15. Mr.S.P. Bhandarkar, the learned counsel for the plaintiff submits that plaintiff and defendant nos. 3 and 4 were coparceners in terms of Section 6 of the Hindu Succession Act, 1956 (in short, “the Act of 1956”) as amended by Hindu Succession Amendment Act, 2005. The sisters being coparceners, they have a right of inheritance in terms of the said Act and, therefore, they are/were entitled to 1/5th share in the properties left intestate by their father. He has invited my attention to the proviso to sub-section (1) of Section 6 of the Act of 1956 which protects/saves the disposition or alienation including any partition or testamentary disposition of the property which has taken place before 20.12.2004. According to him, the ‘disposition or alienation’ of the property is only saved. Mere ‘partition or testamentary disposition of property’ by itself, will not amount to disposition or alienation. He has taken aid of sub-section (5) of Section 6 of the Act of 1956 in support of the aforesaid contention. Sub-sec.(5) provides that nothing contained in Section 6 shall apply to the partition which has been effected before 20.12.2004. The explanation to sub-section provides that partition means any partition made by the execution of deed of partition duly registered under the Registration Act, 1908 or partition effected by the decree of the Court.

16. The learned counsel for the plaintiff has relied upon the judgment in the case of Vineeta Sharma vs.Rakesh Sharma and others:

reported in (2020) 9 SCC 1, wherein the Hon'ble Supreme Court while considering the scope of sub-sec.(5) of section 6 of the Act of 1956, held in Paragraph Nos. 135 and 136 as under :-

“135. *The special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardize the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, nor otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of*

probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under section 6(5) had taken place.

136. *The expression used in the Explanation to Section 6(5) “partition effected by a decree of a court” would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by the Court. Even if partition is supported by a registered document it is necessary to prove that it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected (sic affected) by a decree of a court, it can be recognized, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6(5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; thus, the court may recognise the other mode of partition in exceptional cases based upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6 (5) and its Explanation.”*

17. Thus, the Hon'ble Supreme Court has held that the cases where the issue of partition of property arises for consideration in a claim under the Hindu Succession Amendment Act, 2005, the Court should be on guard while considering its effect. The Court will have to first satisfy itself whether the partition has been given effect to and acted upon and is not otherwise sham and invalid document. This caution has been given by the Supreme Court on the count of possibility of manufacturing unregistered document with a plea of oral partition, because the execution of registered document for partition was in earlier point of time, not necessary. The Supreme Court has also held that in such cases, the finding ought not to be based on the preponderance of probabilities in view of the provisions of the gender justice and that the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5) can only be acted upon.

18. Thus, what has been highlighted, is that the cases in which the claim or defence in a suit is based on the oral partition or a document of partition which is unregistered, the Court should be extremely cautious in accepting the evidence unless there is cogent proof of partition having been acted upon for a long time. Even where the partition deed is a registered document, the party claiming rights under the partition deed will have to prove that it had been given effect to and acted upon.

19. In the present case, the partition deed is a registered document and there is ample evidence to show that partition has been acted upon by the parties. The plaintiff herself has signed the application seeking mutation entries in the name of defendant nos.1 and 2. These

two defendants, from the date of the partition, have utilised the suit properties for their own benefits without any objection from three sisters until the Act of 1956 came to be amended. Thus, it appears that the three sisters have realised of their rights immediately after the Act of 1956 was amended. This speaks volumes of the conduct of the three sisters. The judgment of the Supreme Court cannot be taken aid of to put forth a fabricated claim. The claim put forth by the plaintiff and defendant nos. 3 and 4 of obtaining their signatures on partition deed by fraud, misrepresentation or influence has not been pleaded in accordance with law and also not proved. In fact, the defendant nos. 3 and 4 have, except for making vague and bald allegations in this regard in the written statement, have not led any evidence in support of the said fraud, misrepresentation and influence.

20. The plaintiff in her chief-examination has deposed that the suit property is an ancestral property and was not partitioned by metes and bounds amongst the surviving legal heirs of their father Shankarrao Manapure. She then deposed that she issued notice on 18.12.2006 which was replied by the defendant nos. 1 and 2 on 04.01.1007. The defendants have stated that the property has already been partitioned vide registered partition deed dated 30.12.1992. She has then deposed that the partition deed is a fraudulent document obtained by misrepresentation of facts to deprive her and defendant Nos. 3 and 4 of their respective shares. She has then deposed of undue influence by defendant Nos. 1 and 2 upon her as also upon the defendant Nos. 3 and 4. The appellant/plaintiff, however, has only filed copy of her chief-examination, but not of cross-examination. The cross-examination,

therefore, will have to be gathered from the judgments of the Courts below.

21. The judgments of the Courts below indicate that the story put forth by the plaintiff of misrepresentation and fraud is outlandishly preposterous and that the plaintiff and defendant Nos. 3 and 4 had knowledge of execution of the partition deed. The evidence also indicates that the plaintiff was a party to the application seeking mutation of the suit property in the name of defendant Nos.1 and 2. Thus, the partition has been acted upon.

22. That apart, the plaintiff has not challenged the partition deed. When questioned, as to why the partition deed has not been challenged, the spontaneous response of the Counsel is 'not required'. The learned counsel for the plaintiff submits that the partition deed being fraudulently obtained document, need not be challenged. This argument is contrary to the provisions of law. Sections 15 to 18 of the Indian Contract Act, 1872 (for short "Act of 1872") defines coercion, undue influence, fraud and misrepresentation respectively. Section 19 of the Act of 1872 provides that when consent to an agreement has been caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. In the present case, neither the plaintiff nor the defendant nos. 3 and 4 have opted to cancel the partition deed, in terms of Section 31 of the Specific Relief Act, 1963. In absence thereof, the plaintiff is precluded from lodging a claim of partition with a self declaration of void partition deed. The plaintiff is not competent to declare the partition deed, a void document. In the circumstances, the absence of

challenge to the partition deed will be fatal to the plaintiff's case. Both the Courts below have thus correctly held that the plaintiff is not entitled for any relief.

23. On the point of interpretation, I do not find any substance in the contentions of the appellant that the proviso to sub-Section (1) of Section 6 of the Act of 1956 saves and protects only 'the disposition or alienation' of the property that has taken place before 20.12.2004 but not the 'partition or testamentary disposition'. The interpretation put forth by Mr.Bhandarkar that the expression 'partition and testamentary disposition' has been included to mean 'disposition or alienation' of the partitioned property or of the property inherited by testamentary disposition is contrary to the literal rule of interpretation viz. where the meaning of the words in a statement is clear and unambiguous, there is no need to invent ambiguities and look into the legislative intent or object of the Act. The plain and simple interpretation of the expression 'disposition or alienation' for Section 6(1) of the Act of 1956 would and must include 'the partition and testamentary disposition' of the property. The inclusion of the words 'partition and testamentary disposition' to define disposition or alienation of the property in the proviso to Sub-Section (1) of Section 6 of the Act of 1956 will and should mean that the disposition or alienation of the property in the form of partition or testamentary disposition. The property under question having been partitioned prior to 20.12.2004, the partition is protected. The submissions of Mr Bhandarkar, in this regard appears to me to be an attempt made by the plaintiff to come out of the clutches of the said proviso.

24. In any case, the Courts below the Courts below have not dismissed the suit on the count that the plaintiff and defendant Nos.3 and 4 were not coparceners but have dismissed the suit on the count that there was valid partition between the plaintiff and defendants and that therefore, the plaintiff cannot seek further partition of the suit property. The concurrent findings have been rendered by the Courts below after considering the entire evidence.

25. Thus, the appellant has failed to show that any question of law, much less substantial question of law arises in the instant Appeal. There is absolutely no substance in the contentions raised by the appellant. The Appeal therefore is liable to be dismissed and is accordingly dismissed.

[ANIL L. PANSARE, J.]

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