



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

902 SECOND APPEAL NO. 79 OF 1999

**NARHARI SAKHARAM CHOUSALKAR AND ANOTHER
VERSUS
SAKHARAM GOPALRAO CHOUSALKAR AND OTHERS**

.....
Advocate for Appellant : Mr. H.V. Tungar h/f. C.R.Deshpande
Advocate for R/2a to 2d: Mr. P. P Bafna
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**CORAM : Y. G. KHOBRAGADE, J.
DATE : 19.03.2024**

PC.:-

1. Heard Mr. Tungar h/f. C.R. Deshpande, learned counsel appearing on behalf of the appellants and Mr. Bafna, learned counsel appearing for Respondent Nos. 2-a to 2-d.
2. Present appeal under Section 100 of the C.P.C. is directed against the Judgment and Decree Dated 12.01.2009 passed in Appeal bearing R.C.A. No.267/1994 by the learned 2nd Additional District Judge, Beed, arising out of Judgment and Decree dated 08.09.1994 passed by the learned Jt. C. J. Jr .Dn., Beed in Civil Suit bearing R.C.S. No. 423/1989, whereby the suit for partition and separate possession of the suit property dismissed.
3. The appellants are the original-plaintiffs and the respondents are

the original defendants. For the sake of brevity I would like to refer the parties in their original capacity.

4. According to the plaintiffs, agricultural lands bearing Gut Nos. 280, 281, 51, 50 and 58 to the extent of their half shares are situated at village Rui-Limba. The said lands are ancestral and joint Hindu family properties of the Plaintiffs and Respondent No.1/ Ori. defendant No.1. The Respondent No.1 – Sakharam is the father of Appellant No. 1 and husband of Appellant No.2 Shalini. The Respondent No.2 - Piraji and Respondent No.3- Rangnath are the purchasers of the suit lands. According to the plaintiffs, the Respondent No.1-Sakharam was extravagant person who was spending money like anything to satisfy his lust and in consequence of same alienated suit lands in favour of respondent nos. 2 and 3. According to the appellants without any legal necessity, the respondent no.1-Sakharam on 11.03.1985 sold out property of Gut Nos. 280, 281, 51, 50 and 58 for a meagre amount of Rs. 4,000/-. So also, the respondent no.1 never received consideration amount from the vendee. The plaintiffs have further pleaded that, the Respondent no.1 was Government Employee and his monthly income was sufficient to maintain his family members i.e. plaintiffs/appellants. Therefore, said sale transaction was disputed and alleged that said sale transaction was neither for legal necessity nor for their betterment. So also, the sale

transaction which was occurred between Respondent Nos. 1 & 2 not binding upon them.

5. Though, the Vendee i.e. Respondent no.1, the father of appellant no.1 and husband of appellant no.2 served with notice he failed to file written statement. The respondent Nos. 2 and 3, the L.R.'s of Vendor filed their written statement at Exh.19 and resisted the claim of the plaintiffs. According to the defendants, the plaintiffs' suit barred by limitation. Both the defendants denied that suit land was ancestral and joint Hindu family property of the appellants. They further denied that the respondent no. 1 had bad vices. According to defendants the suit land was originally Inam lands and due to enforcement of Hyderabad Abolition of Inam and Cash and Grants Act, the lands were vested in the Government w.e.f 01.07.1955. Since, respondent no. 1 was in possession of the suit land on 01.07.1960, hence, occupancy rights were confirmed upon him and deposits were made by him. Therefore, respondent no.1 was declared legal owner of the suit land. Thereafter, in the year 1976, the respondent no.1 executed agreement of sale in respect of land in favour of their father. So also, on application, the Collector granted permission on 27.04.1982 on certain condition. Thereafter, they deposited necessary amount on 11.03.1985 and get the sale-deed executed in their favour. They further pleaded that, since 1965-1966 they are in possession of

the suit lands being tenants and their tenancy converted into ownership by virtue of the sale-deed executed in their favour. Therefore, they prayed for dismissal of the suit.

6. On the basis of rival pleadings of both the sides the learned trial Court framed issues at Exh.30. Both parties to the suit led evidence. After conclusion of the trial the learned trial Court dismissed the suit of the plaintiffs holding that the suit property is not ancestral property of the plaintiffs as it is not acquired by respondent no.1 by inheritance. The suit property was disposed of in the year 1985 i.e. much prior to the death of Gopalrao, the father of the defendant no. 1 and grandfather of the plaintiff no.1. Therefore, defendant no.1 had not acquired the suit property by way of succession and it was not available for the plaintiff no.1 to get right over the suit property by birth. So also, as per evidence of the plaintiffs, the birth date of plaintiff no.1 i.e. 19.09.1994 was proved by the PW-2 who was the employee of Nagar Parishad, Beed and produced birth certificate Exh.101. As per the evidence of PW-3 Ramnath Sakale, the Headmaster of the Vivekanand High School, Beed, who produced birth certificate of the plaintiff no.1, wherein date of birth of the plaintiff no.1 was shown as 19.09.1994. The plaintiff further examined PW-4 Dr. Kumodini Kale, who testified that the plaintiff no. 2 - Shalini gave birth to plaintiff no. 1 in her hospital on

19.09.1984. Therefore, the learned trial Court presumed that the plaintiff no.1 was born on 19.09.1984 and the sale-deed executed by the defendant no.1 in favour of the defendant nos. 2 and 3 on 11.03.1985 the date when the plaintiff no.1 was minor. Since, the defendants did not succeed property in inheritance, therefore the defendant no.1 has no right to claim property by succession. So also, the plaintiffs failed to prove that to meet bad vices defendant no. 1 sold suit property in favour of the defendant nos. 2 and 3. So also, defendant nos. 2 and 3 are the bona-fide purchaser of the suit lands. Therefore, the sale deeds are binding upon the plaintiffs, hence the suit of the plaintiffs was dismissed.

7. The learned First Appellate Court passed the impugned judgment and decree on 12.01.1999 and confirmed the findings recorded by the learned trial Court holding that the property which the respondent no.1-Sakharam had received was not by the operation of succession. Oral as well as documentary evidence placed on record by the respondents proved that in the year 1976 when Gopalrao the father of the defendant No. 1 was alive and the defendant has not entered into an agreement of sale transaction and said fact appears from the compromise decree dated 19.10.1976 Exh.37 passed in appeal bearing R.C.A. No.112/1976, as well as copy of judgment and decree passed therein at Exh.78.

8. On perusal of the Judgment Dated 12.01.1999, it further appears that in appeal bearing R.C.A. No. 112/1976, the respondent therein Sakharam (present defendant no.1) admitted possession of the defendant nos. 2 and 3 over the suit lands prior to 10 years before the compromise. So also, names of defendant nos. 2 and 3 are appearing in the 7/12 extract in cultivation column. Since, appellants-plaintiffs failed to prove that the suit land is their ancestral property, so also, the plaintiffs failed to prove that defendant no.1-Sakharam was not having right to transfer the suit property. The evidence available on record proves that the sale transaction was made by the defendant no.1 in favour of the defendant nos. 2 and 3 due to family necessities. Ultimately the learned First Appellate Court dismissed the appeal.

9. Since, both the Courts below recorded concurrent findings which does not appear contrary to the provisions of law as well as the evidence available on record. Therefore, no interference is called at the hands of this Court by invoking the jurisdiction under Section 100 of the C.P.C.

10. In view of the above discussion, the present appeal is dismissed. Parties to bear their own cost.

[Y. G. KHOBRAGADE, J.]