



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 SECOND APPEAL NO. 58 OF 2024

Pralhad Rakhmaji Diwte

VERSUS

Rakhmaji M. Diwate Died Thr Lrs Smt. Dhondabai R. Diwte
Died Thr Lrs And Ors

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Advocate for Appellant : Mr. A.R. Vaidya

Advocate for Respondent 2-Caveator : Mr. R.B. Deshmukh a/w
R.R. Deshmukh

CORAM : S. G. CHAPALGAONKAR, J.

Dated : November 19, 2024

FINAL ORDER :-

1. The appellant/original plaintiff impugns the judgment and decree dated 5.10.2023 passed by the District Judge-3, Jalna in RCA No.16 of 1999 as well as the judgment and decree dated 22.1.1999 passed by the C.J.J.D. Jafrabad in RCS No.82 of 1991.

2. Mr. A.R. Vaidya, learned advocate appearing for the appellant submits that, land survey no.29 admeasuring 6 Acres 1 Gunthas situated at village Jafrabad, District Jalna is ancestral property of appellant. His father Rakhmaji had partitioned the same and put in possession of half share i.e. 3 acres each to both the brothers. On 24.1.1987 a written agreement was executed by appellant's father acknowledging

partition of the suit property. However, in the year 1989 appellant's father executed sale-deed of the suit property in favour of defendant no.2, who is son of appellant's brother. Consequently, appellant was dispossessed from the suit property. The appellant filed RCS No.82 of 1991 before the Civil Judge J.D., Jafrabad claiming the relief of possession of his half share in the suit property and declaration that the sale deed executed by his father in favour of respondent no.2 is not binding on his share. The Trial Court dismissed the suit, however, accepted contention of plaintiff that sale-deed executed by his father in favour of defendant no.2 is without consideration, hence, null and void.

3. In appeal, District Court confirmed decree of trial court and also allowed cross objection filed by respondents, thereby setting aside finding of trial court, rendering sale-deed as null and void.

4. Mr. Vaidya would submit that, apparently, sale-deed executed by the appellant's father in favour of respondent no.2 was without consideration. Trial Court had rightly observed that sale-deed was nominal, but refused declaration on the point of limitation. Mr. Vaidya would submit that Trial

Court had also accepted case of appellant based on Agreement dated 24.1.1987, however, Appellate Court erroneously declined to rely on same to accept case of equal partition of ancestral property. According to Mr. Vaidya, defendant no.1 i.e. father had accepted that there was oral partition. He would further submit that Trial Court has erroneously decided the issue of limitation. In fact, when the relief of possession was sought, limitation of 12 years is prescribed. Article 64 of the Limitation Act would apply and suit will have to be treated within the limitation.

5. Per contra, Mr. R.V. Deshmukh, learned advocate appearing for the respondents-caveator supports the impugned judgment and decree. He would submit that both the Courts have recorded concurrent finding of fact and dismissed the suit. Both the Courts have refused to grant any relief of declaration and possession as claimed by the appellant by recording elaborate reasons.

6. Having considered the submissions advanced and after going through reasoning adopted by the Courts below, it can be observed that the appellant rests his claim on Kararnama exhibit 70 to contend that his father Rakhmaji had

partitioned the land from gat no.29 and put him in 50% share. According to him, subsequent sale-deed executed by his father in favour of defendant no.2 i.e. son of his brother Trimbak is without consideration and null and void. Trial Court accepted case of the appellant as regards to execution of the Kararnama at Exhibit-70. However, held that Kararnama can be treated as expression of desire to effect the partition on his demise and does not create any right in favour of the appellant during life time of father. The Trial court has further held that appellant's father Rakhmaji during his lifetime executed sale-deed in favour of defendant no.2. Consequently, even accepting execution of the Kararnama exhibit 70, no right can be created in favour of the appellant.

7. So far as sale-deed dated 27.5.1987 is concerned, the Trial Court recorded finding that father of the appellant has executed such sale-deed. Further, plaintiff is not entitled under law to assail the same after expiry of three years period of limitation prescribed for seeking the relief of declaration.

8. First Appellate Court, however, observed that the execution of Kararnama dated 24.1.1987 (exh.70) does not confer any right in favour of the appellant. The Appellate

Court observed that execution of such document is denied by the appellant's father in his written statement so also he has executed the sale-deed exhibit 86 in favour of defendant no.2 during his lifetime. Therefore, the Kararnama exhibit 70 would not confer any right in favour of the appellant.

9. First Appellate Court has further observed that execution of the sale-deed has been admitted by appellant's father as such while dealing with Cross objection reversed the finding recorded by the trial court that the sale-deed is nominal, null and void.

10. On careful reading of Kararnama Exhibit-70, it can be observed that land survey no.11, 12 and 29 were given for cultivation by Rakhmaji to both the sons on condition that they would provide him agricultural product. Kararnama further stipulates that on his death, both brothers shall get land partitioned between themselves. Plain reading of the aforesaid Kararnama would show that there was no stipulation regarding transfer of ownership and it is in the nature of family arrangement for joint cultivation by both the brothers. Such document hardly creates any right in favour of the appellant, particularly, theory of the appellant that there was previous

partition by his father and half portion of land gat no.29 was put in possession does not get support. Pertinently, appellant's father in his written statement denied execution of such document. In that view of the matter, plaintiff has no right to claim ownership and possession on the basis of Kararnama.

11. The appellant further challenged sale-deed executed by his father in favour of defendant no.2 on the ground that, it is nominal and without consideration. Pertinently, it is not case of the appellant that his father was not owner or he had no authority to transfer the land; only the ground of challenge is that sale-deed is without consideration. Although, trial court had accepted case of the plaintiff on this point, Appellate Court observed that there are stipulations in the sale-deed regarding passing over the consideration. Father of the plaintiff accepted that he has received consideration against execution of the sale-deed. When the appellant himself is coming with a case that his father has transferred the land that fell to the share of father during oral partition and when he do not challenge authority of his father to transfer the land, he cannot raise objection to the validity of the sale-deed on the ground that it was nominal when parties to the contract are

accepting same to be genuine. The third person i.e. appellant would have no right to challenge the transaction under sale-deed alleging that it is without consideration. Pertinently, both the Courts have concluded that plaintiff was aware about execution of the sale-deed since 27.5.1989, however, present suit is filed beyond three years. As such, it is barred by the limitation. Apparently, the appellant instituted the suit on 01.11.1991. The prescribed period of limitation seeking declaration against the sale-deed expired in the month of June, 1990. Therefore, no fault can be found in the approach of the Courts below. No substantial question of law arises for consideration in this second appeal. Second appeal stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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