



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 15 OF 2023
WITH CIVIL APPLICATION NO. 10475 OF 2019

KASHIBAI DATTA WAGHMARE AND OTHERS
VERSUS
SARUBAI RAOSAHEB KATARE DIED THROUGH LRS AND OTHERS

Ms. Jayashree T. Ghorpade (Nawale), Advocate for the appellants
Mr. S. N. Jamakwade, Advocate for respondent Nos. 2 and 3.

CORAM : R. M. JOSHI, J.
DATE : 11th JANUARY, 2024

P.C. :-

1. This appeal is under Section 100 of the Code of Civil Procedure taking exception to the judgment and decree passed in RCA No. 68/2011 confirming the judgment of the Trial Court passed in RCS No. 89/2005 whereby the suit filed by the plaintiff for declaration and possession of the suit properties is dismissed.
2. For the sake of convenience parties are referred to by their nomenclature in original proceeding.
3. Facts which led to the filing of the present appeal can be narrated in short as follows:
 - (i) Plaintiffs are daughters of Raosaheb who died on 28/05/2005. It is

the case of the plaintiffs that the suit properties are ancestral properties. It is their further case that the Raosaheb was of unsound mind and hence was not capable of executing any sale deed. Defendant Nos. 2 and 3 claimed to have obtained sale deed from Raosaheb without consideration. With these averments the suit came to be filed. Defendant Nos. 2 and 3 opposed the suit by claiming themselves to be a bona fide purchaser of the properties. It is their case that for legal necessities that is for meeting medical expenses of Raosaheb the suit properties were sold under the registered sale deed.

(ii) Learned Trial Court framed issues and parties led evidence. Trial Court has held that no evidence to show that the deceased Raosaheb was incompetent to execute sale deeds dated 27/11/2000 and 08/12/2004 in respect of the suit properties. It is also held that the suit properties are ancestral properties but the sale thereof was for legal necessity.

4. Learned counsel for the plaintiffs submitted that both First Appellate Court as well as the Trial Court committed error in appreciating evidence of Dr. Patil – PW-3. Dr. Patil has specifically deposed about examining Raosaheb on 29/06/2003 wherein he found Raosaheb suffering from brief psychic disorder. He was talking incoherent.

According to him the said symptoms were found 15 days prior to his examination. It is a case of the plaintiffs that at the time of execution of the sale deed in question Raosaheb was not of sound mind and therefore was incompetent to execute any contract. The burden is on the plaintiffs to prove that at the relevant time he was suffering with such incapacity. Persual of evidence of Dr. Patil shows that it is insufficient prove that at the time of execution of sale deeds, Raosaheb was not possessing sound mental health due to which he can be said to be a person incapacitated to execute a valid contract. Plaintiffs therefore have failed to discharge their burden.

5. The next contention fo the learned counsel for the plaintiffs is about error committed by both Courts below in recording of the finding in respect of legal necessities. The said submission also devoids merit as the defendants had pleaded legal necessity for sale and the initial burden on the defendant No.2 and 3 was discharged with examination of the witness who claims that the sale of suit properties was done as Raosaheb and his wife were of old age with no source of income and for meeting medical expenses, the land was required to be sold. As recorded in the judgment of the Trial Court in the cross-examination it is suggested to this witness that as Raosaheb and his wife were old age and because they were unable to work and for their livelihood they sold the suit land.

There is no dispute about the fact that said finding recorded by the Trial Court it is consonance with the evidence on record.

6. Learned counsel for plaintiffs sought to place reliance on judgment of *Vinita Sharma Vs. Rakesh Sharma and Ors., AIR 2020 SUPREME COURT 3717* in order to claim right of daughter in ancestral properties. In this regard it is necessary to note that father of plaintiffs was undeniably Karta of family. His right to dispose of property for legal necessity can not be challenged. As held by both Courts below that the suit properties were sold by for legal necessities and hence in absence of success in challenging validity of transaction, the same is binding on all members of joint family. Hence amended Section 6 of Hindu Succession Act and judgment (cited supra), do not come to rescue of plaintiffs.

7. Having regard to the aforesaid facts appellant has failed to make out any case to show any perversity in the findings recorded by the both courts below. Thus, no substantial question of law is involved in this appeal in order to entertain the same. Hence appeal stands dismissed. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp