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SA 425.24 r.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 425 OF 2024

Dagdu S/o. Mahipathi Pere (Deceased)
through LRs

1] Smt. Jijabai w/o. Dagdu Pere,
Age 73 yers, Occ. Agri,
R/o. Patoda, Tq. And Dist. Aurangabad.

2] Smt. Latabai @ Mandabai Madhukar
waghchavre,
R/o. Dhoopkheda, Tq. Paithan,
Dist. Aurangabad.

.. Appellant.

Versus

1] Dr. Jainendra s/o. Inderchand Challani,
Age 55 years, Occ. Doctor,
Plot No. 29, N-3 CIDCO,
Aurangbad.

2] Tukaram S/o. Hari Matkar,
Age 66 years, Occ. Agri,
R/o. As above.

3] Sudam s/o. Dagdu Pere,
Age Major, Occ Agri,
R/o. Ptoda, Tq. And Dist. Aurangabad.

.. Respondents
(Ori. Defendants).

Mrs. P.V. Lange, Advocate for appellants
Mr. P.F. Patni, Advocate h/f. Mr. S.L. Naswe, Advocate for respondent
No.1.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 9th DECEMBER, 2024.

JUDGMENT :-

The appellants/LRs of original plaintiff impugn judgment and decree dated 14.6.2024 passed by District Judge, Aurangabad in R.C.A. No. 82 of 2019, as well as the judgment and decree dated 13.2.2019 passed by Civil Judge (J.D.), Aurangabad in R.C.S. No. 449 of 2012.

2. For sake of convenience, parties are referred to as per their original status.

3. The appellants/original plaintiffs instituted a suit seeking declaration that sale deed dated 30.6.2010 is null and void and for perpetual injunction. It is the case of the plaintiff that he is exclusive owner and possessor of suit property. He was in need of money. Hence, he approached defendant No.2 Tukaram, who is a money lender. He agreed to advance the amount on condition of execution of sale deed in respect of suit land by way of security. Consequently, plaintiff executed sale deed dated 5.9.2008 in favour of defendant No.2. Thereafter, defendant Nos. 1 and 2 prepared false cheques in the name of plaintiff. They obtained signatures of the plaintiff on withdrawal slip. They got withdrawn amount from their own accounts. Defendant Nos. 1 and 2 in collusion with each other called plaintiff to the office of Sub-Registrar, prepared false documents and got executed sale deed in favour of defendant No.1, wherein, plaintiff's son - Defendant No.3 is shown as consenting party. According to plaintiff, his wife and son have not received any consideration amount. They are in actual possession of property. Defendant Nos. 1 and 2 obstructed plaintiff's possession over

suit property. Plaintiff filed police complaint and also issued legal notice dated 5.12.2011 for re-conveyance of sale deed, which is not replied by them.

4. Defendant No.1 filed written statement, contending that plaintiff firstly executed sale deed of 31 Guntha land in favour of defendant No.2 on 5.9.2008. He handed over possession of the property. Mutation entry was certified in pursuance of the aforesaid sale transaction. The defendant No.1 wanted to purchase 1 Acre land. Defendant No.2 agreed to sale his 31 Guntha land and plaintiff agreed to sale his 10 Guntha land. Consequently, sale deed for 41 Guntha land has been executed in favour of defendant No.1 against consideration of Rs. 1,15,000/- to plaintiff and Rs. 1,50,000/- to defendant No.2. Accordingly, sale deed dated 30.6.2010 has been executed in favour of defendant No.1. Plaintiff received his consideration amount under 2 different cheques drawn on Malkapur Urban Cooperative Bank. Plaintiff has withdrawn said amount and filed present suit only to extract more money.

5. The trial court framed issues. Parties led their respective evidence in trial. After hearing parties, the trial court concluded that sale deed dated 30.6.2010 is valid and defendant No.1 has acquired ownership and possession of said land. The claim of plaintiff for declaration and injunction came to be rejected. Consequently, suit has been dismissed. The appellate court also concurred with the finding recorded by the trial court and dismissed the appeal filed by plaintiff.

6. Mrs. Puja Langhe, learned advocate for the plaintiffs/appellants submits that defendant Nos. 1 and 2 obtained sale

deed by mis-representation. No consideration was passed on to the plaintiff against the sale of land. The possession continued with plaintiff and his son. She would further submit that suit property is joint family property of the plaintiff and his son. The sale deed is without legal necessity. Such sale deed would be invalid. By inviting attention of this Court to the cross-examination of witnesses, she would submit that defendant No.2 has admitted during cross examination that till death of plaintiff Dagadu, he was in possession. Further, defendant No.1 could not tell the exact date of execution of sale deed and also admitted that he had not made inquiry as regards to the existence of legal necessity. According to her, both the courts below have committed serious error in appreciation of evidence and dismissing the suit. In support of her submissions, she relies upon following judgments :-

I] Kewal Krishan vs. Rajesh Kumar and others reported in 2022(2) Mh.L.J. 25

ii] Krushna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and others reported in AIR 2003 Supreme Court 4351.

7. Mr. Patni, learned advocate for respondent No.1 – Caveator supports the impugned judgment and decree, contending that the concurrent findings of fact need not be disturbed in second appeal. No substantial question of law arises for consideration in this Appeal. According to him, the objections raised in the second appeal are essentially regarding factual aspects of the matter, which are rightly dealt and decided by the courts below.

8. Having considered submissions advanced and on perusal of the reasoning adopted by the courts below, it can be observed that the

suit has been filed by plaintiff seeking declaration that the sale deed dated 30.6.2010 in respect of 41R land from Gat No.16 situated at Village Patoda, District Aurangabad is null and void and not binding upon the plaintiff. It is contention of the plaintiff that in fact, he had executed nominal sale deed dated 5.9.2008 in favour of defendant No.2 by way of security against loan. Lateron, defendant Nos. 1 and 2, in collusion with each other, misrepresented him and got executed sale deed dated 30.6.2010 in favour of defendant No.1. It can be observed that sale deed dated 5.9.2008 executed by plaintiff is for 31R land. The contents of sale deed clearly show that it was an out and out sale for consideration. There is nothing on record to show that it was a loan transaction, as contended by plaintiff. Lateron, plaintiff and Tukaram jointly executed sale deed dated 30.6.2010 in favour of defendant No.1. Land admeasuring 41R has been transferred in ownership of defendant No.1. The area of 31R land purchased by defendant No.2 Tukaram from plaintiff, and 10R land out of ownership of plaintiff has been transferred to defendant No.1 under aforesaid sale deed. Sudam (defendant No.3) who is son of plaintiff is a consenting party to the sale transaction. It can be observed that consideration amount was paid by way of cheques. The details of such cheques are mentioned in the sale deed. Those cheques have been realized. The plaintiff received consideration of Rs. 1,15,000/- towards his 10 Guntha land, which is subject matter of sale deed dated 30.6.2010. Tukaram received consideration of Rs. 1,50,000/- towards his 31 Guntha land.

9. In this background, there is nothing on record to show that impugned sale transaction was a result of fraud or mis-representation, as contended by plaintiff. It is trite that sale transaction can be declared as null and void on the ground of fraud or mis-representation. Plaintiff was

required to lead adequate evidence in respect of such contention. The burden to prove that sale-deeds are outcome of fraud or misrepresentation was to be discharged by plaintiff. In present case, only two circumstances are sought to be relied upon to contend that sale deed was an outcome of fraud or misrepresentation. According to plaintiff, the possession continued with his family. For that purpose he relies on admission of DW-2 stating that plaintiff Jijabai is in possession of suit land. However, perusal of her cross-examination shows that, immediately on next breath, DW-2 states that he is not aware as to who is in actual possession of land. Therefore, based on such stray unsupported admission, no inference can be drawn that transaction was not genuine. Plaintiff is also contending that consideration was not passed on to him, which appears to be inconsistent with the record as the amount of consideration paid by cheques has been reached to his account. As such, aforesaid circumstances are not sufficient to bring home the case of fraud or misrepresentation.

10. The second contention raised on behalf of plaintiff is that, suit property is ancestral property and that has been sold without legal necessity. However, such ground is not available to the plaintiff in this case. Plaintiff himself sold out the property under registered sale deed and now raising challenge to the said transaction. It is trite that Karta of Hindu Joint Family is entitled to transfer joint family property for legal necessity. Such transfer would be voidable at the instance of another coparcener, who assails validity of the transaction on the ground that it sans legal necessity. In present case, suit is not instituted by a coparcener against Karta seeking partition. Challenge in the suit is to the sale deed is by party to sale transaction on the ground that it is outcome of misrepresentation. However, such contention is not proved. Therefore,

second contention would also not be available to the plaintiff/appellant.

11. Both the courts have concurrently held that plaintiff failed to prove that defendant No.1 exercised fraud or mis-representation in any manner. Consequently, no substantial question of law arises for consideration in this appeal. The appeal, being sans merit, stands dismissed. Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-