



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

SECOND APPEAL NO.255 OF 2017

Ushabai Pandurang Munjavar

Age: Major years, Occu. Agri., and Household

R/o Sirsav Tq. Paranda Dist. Osmanabad.

..Appellant
(Ori. Plaintiff)

Versus

1. Kalawati w/o Kundalik Munjawar
Age 80 years, Occu. Household,
R/o as above.

2. Sumanth @ Narayan Suryadhan Umap
Age 55 yeras, Occu. Service,
R/o Kallamwadi Tq. Barshi
now at Malkapur Tq. Paranda
Dist. Osmanabad.

3.. Vishnu Suryadhan Umap
Age 42 years, Occu. Agri.,
R/o Kallamwadi Tq. Barashi Dist. Solapur

4. Mukthabai Somnath Ghodake
Age major Occu. Household
R/o Mankeshwar Tq. Bhoom Dist. Osmanabad ..Respondents
(Ori. Respondent)

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Mr. S. Y. Mahajan, Advocate for the Appellant.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED 04th DECEMBER, 2024.**

ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 03.05.2016 passed by District Judge-1, Bhoom in Regular Civil Appeal No.181/2014, by which judgment and decree dated 30.04.2010 passed by Civil Judge Junior Division, Paranda in

counter claim filed by respondent nos.3 and 4 in Regular Civil Suit No.48/1995 has been confirmed. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The plaintiff instituted suit for declaration of ownership and perpetual injunction against defendants contending that she is daughter-in-law of defendant nos.1 and 2. The defendant nos.3 and 4 are her sister-in-law. The plaintiff had married with son of defendant nos.1 and 2, who died on 17.10.1992. The defendant no.1 was Karta of the family. On 28.10.1992, defendant no.1 had partitioned joint family property and gave portion of 90R land from Gut No.516 to plaintiff as per boundaries specified in plaint. The plaintiff claims that she was put in possession on 28.10.1992. However, entries regarding such partition were not taken in revenue record. Taking disadvantage of this fact, defendants obstructed cultivation of land on 05.04.1995. Hence, she filed suit.

3. The defendants refuted the claim of plaintiff. According to defendant no. 1, he had incurred debts for performing the funeral rites of his son and the marriages of his daughters. He had also been indebted to the bank. He decided to sell out property to meet out legal necessity. The defendant nos.3 and 4 offered to purchase the same. Accordingly, sale deed was executed in favour of defendant no.4 on 15.09.1993. Since then, they are in possession of

the property as owners. The mutation entry is effected on the basis of sale deed. The defendant nos.3 and 4 have also filed counter claim seeking declaration of their ownership and decree of perpetual injunction against plaintiff. In alternate, they claimed that 1/6th share be given to plaintiff by effecting partition. The plaintiff failed to file written statement to the counter claim. The Trial Court framed the issues. The plaintiff remained absent at the time of hearing of suit. Consequently, her suit was dismissed in default, whereas counter claim of defendants was decreed. The plaintiff preferred Appeal against decree passed in the counter claim. However, Appellate Court dismissed the Appeal and concurred with findings of Trial Court that defendant nos.3 and 4 acquired ownership and possession of the property by virtue of sale deed.

4. Mr. Mahajan, learned Advocate appearing for the appellant vehemently submits that suit of the plaintiff was dismissed in default. Therefore, matter ought to have been remanded back to the Trial Court. He would submit that plaintiff being wife of son of defendant nos.1 and 2, she was entitled to inherit share of her husband. The Trial Court ought to have considered that aspect and ought to have refused to grant decree of ownership and possession in favour of defendant nos.3 and 4 on the basis of sale

deed executed by defendant no.1, which was non-est and not binding on the rights of the plaintiff.

5. Having considered submissions advanced and upon perusal of the reasoning adopted by Courts below, it is evident that plaintiff instituted suit claiming relief of declaration of ownership and perpetual injunction. However, suit was dismissed for want of prosecution. The plaintiff has not taken any step for restoration of the suit. In that suit she claimed her title on the basis of partition of 90R area in the suit property, but she failed to file written statement to the counter claim raised by defendants, wherein relief of declaration of ownership and perpetual injunction was claimed against plaintiff. The pleadings in the counter claim have gone unchallenged. Undisputedly, defendant no.1 was Karta of the joint family property and he alienated suit property in favour of defendant nos.3 and 4 by way of registered sale deed. In absence of written statement by plaintiff to the counter claim of defendants, Trial Court accepted the case of defendants as pleaded in the counter claim and passed decree. In this background, when plaintiff failed to raise defence to the counter claim of title of defendant nos.3 and 4, on the basis of sale deed dated 15.09.1993, both the Courts below had no option than to grant decree as per counter claim.

6. Pertinently, defendant no.2 examined himself at Exhibit-77 and reiterated that she became owner on the basis of sale deed. Although she has been cross-examined, only suggestion put to her is that she is deposing falsely. The defendants examined attesting witness of sale deed namely Ashok Patil as DW-2 and proved execution of document and legal necessity of defendant no.1 for selling suit property. His testimony has gone unchallenged.

7. The summary of aforesaid evidence takes to the conclusion that defendant no.1 being Karta of the joint family alienated the suit property in favour of defendant nos.3 and 4 for consideration and defendant nos.3 and 4 acquired absolute title. Even during cross-examination of the witnesses examined by defendants, no suggestion given that sale transaction was not for legal necessity. Basically, plaintiff failed to raise challenge to the transaction between defendant nos.1 and 3 and 4 regarding sell of property. There is no pleading on record on behalf of plaintiff to suggest that such transaction was without legal necessity. It is trite that, sale by Karta of joint family is voidable at the instance of coparcener. However, in present case plaintiff failed to put up defence to counter claim on that count. She failed to take steps for restoration of suit. There is no serious challenge to execution of sale deed by defendant no.1 to defendant nos.3 and 4. The power of defendant no.1 to dispose joint family property being Karta is not objected.

There is no pleading on record branding sale transaction invalid for want of legal necessity. In that view of the matter, no substantial question of law arises for consideration in this second appeal.

8. Consequently, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024