



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 REVIEW APPLICATION (CIVIL) NO. 251 OF 2023
IN
SA/184/1993

PARMESHWAR NAMAJI PATHADE L.RS. VATSALABAI PARMESHWAR
PATHADE AND OTHERS

VERSUS

OMPRAKASH KISHAN WABALE AND OTHERS

...

Advocate for Applicants : Mr. Milind Patil h/f. Mr. Arvind S. Deshmukh

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CORAM : ARUN R. PEDNEKER, J.

DATE : 06th MAY, 2024

ORDER:

1. Heard.
2. Mr. Milind Patil holding for Mr. Arvind S. Deshmukh learned counsel for the review applicants has raised grounds no.II, III, V, VII, as under:-

“II) The order sought to be reviewed is vitiated for non-consideration of the fact that the plaintiff had specifically and categorically admitted that even after execution of the sale deed plaintiffs jointly resided with their father and therefore real concern was partition of the joint family as they wanted to claim their share in the property. This categorical admission amounts to admission of blending of the suit property in the joint Hindu Family Property rendering the sale deed dated 30th June, 1976

inconsequential and the property stands subjected to the authority of the Karta of the Joint Hindu Family. Non-consideration of this material admission and the legal position flowing from the same admission amounts to error apparent on the face of record.

III) Provisions of Article 60 of the Limitation act provides limitation of three years from the date of attaining majority for a minor attaining majority to challenge any transaction, effected by his guardian. Even assuming that the claim of the plaintiffs was based on sale deed dated 30th June 1976, in view of subsequent admission by the plaintiff that, at the time of execution of the sale deed as well as post execution of the sale deed, the plaintiffs continued to be under guardianship of their father, they were required to file suit for cancellation of the sale deed within three years from the date of attaining majority. Mere declaration that the sale deed is not binding is not sufficient. The plaintiffs have not taken any steps to that effect after attaining majority and thus the suit stands not maintainable for want of challenge to the sale deed dated 30th March 1977.

V) The order sought to be reviewed is vitiated for non-consideration of the fact that, while the plaintiff No.1 has categorically admitted that the sale deed secured in favour of the plaintiffs was nominal and for nominal consideration and the plaintiff No.2 has avoided to enter witness box and has not rebutted the defense raised by the appellants in second appeal. The only consequence in this circumstance

follows dismissal of Regular Civil Suit No.96 of 1981 by declaring that the sale deed is hit by S. 54 of the TP Act. Decree passed negating this natural consequence and confirmed in Second Appeal amounts to error apparent on the face of record and is prejudicial to the interest of the applicants.

VII) The order sought to be reviewed is vitiated for non-consideration of the fact that the sale deed dated 30th June 1976 covering entire survey No.72 adm. 9 H 24 R is shown as for consideration of Rs.3000/- while sale deed executed on 30th March 1977, i.e. within nine months from the earlier sale deed states consideration of 2 H land, i.e. less than 1/4th land at Rs.5000/-. This fact speaks for itself and confirms the fact that the sale deed dated 30th June 1976 was nominal sale deed, without consideration and is hit by Sec. 54 of the Transfer of Property Act. While answering the substantial question of law regarding validity of the sale deed on the touchstone of Section 54 of the TP Act, the judgment sought to be reviewed has not considered this material aspect rendering the judgment unsustainable and prejudicial to the interest of the applicants / appellants.

3. The learned counsel relies upon the cross examination of defendant no.1 wherein he admits that the sale deed of the entire suit field S.No.72 was executed and registered in their favour by paying nominal consideration amount and further admits that the sale deed was nominal.

4. The learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **S. Nagaraj and others Vs. State of Karnataka**, 1993 DGLS (SC) 654 at para 36 as under:

“36. It is true that the government is mainly responsible for the above unfortunate state of affairs but that should not desist this court from revising and reviewing the said orders which have such serious consequences. It is one thing to punish the person who furnished false particulars and altogether a different thing to refuse to revise and review the orders when the correct situation and its likely consequences are brought to the notice of court. It is the duty of the court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of court should prejudice none. “Of all these things respecting which learned men dispute”, said Cicero, “there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature.” This very idea was echoed by James Madison (The Federalist, No. 51, page 352. He said:

“Justice is the end of government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit.”

5. The learned counsel also placed reliance at page no.34 and 35 of the Review Application, as under:

“It is true that the real dispute between myself and my father is in respect of portion of the salt field. It is not true that my father had paid the debt of Rs.1633/- to the society in the year 1976. It is true that my self, My father, my brother etc were all residing jointly in one joint family and were in

possession of the suit field till the to the disputed field was purchased by deft.2. It is true that I have filed this suit with collusion with my father deft.1, my mother, My uncle Vishwanath, in order to dispossessed the deft.2 from the disputed field. Gangama 18 my maternal uncle.”

6. The learned counsel further submits that although defendant no.1 was minor at the time of execution of the sale deed, however, at the time when he entered into the witness box he was major and his evidence is material to decide the nature of transaction in sale executed, on 30.06.1976.

7. Having considered the submissions of the learned counsel for the review applicants, no questions, as raised, arise for consideration in this review application. The prior sale deed dated 30.06.1976 executed in favour of the plaintiff by defendant no.1 is held to be valid by the trial court, so also, by the appellate court and the same is based on the consideration flowing from the uncle and mother of the plaintiff. The sale was by registered instrument, as such, after the sale of the suit property to the plaintiff, defendant no.1 had no right to sell the same property to defendant no.2, on 30.07.1977. So also, the suit property continued in possession of the plaintiff till it's forcible dispossession in the year 1981. The evidence of minor on attaining majority, in the instant case, is of little consequence as to the state of affairs, when he was a minor and there is

also overwhelming evidence towards the consideration for sale deed executed on 30.06.1976 and the same has been accepted by the courts below. The findings cannot be reversed in the second appeal, much less, in the review application in the second appeal.

8. At the request of the learned counsel for the review applicants, the applicants are protected from dispossession of the suit property for the period of ten (10) weeks from today.

9. The Review Application, as such, is dismissed.

[ARUN R. PEDNEKER, J.]

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