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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.393 OF 2021
WITH
CIVIL APPLICATION NO. 1068 OF 2019**

Ajitkumar Popatlal Shah ...Appellant/Applicant
Aged : 69 years, Occupation : Business (Orig. Defendant No.1)
Residing at Loham, Post : Kaneri,
Tal : Khandala, Dist : Satara

Vs.

1. Chandrabhaga Vilas Dhamal ... Respondent No.1.
Age : 64 years, (Orig. Plaintiff)
Occupation : Agriculture
2. Sachin Pandurang Dhamal ... Respondent No.2.
Age : 44 years, (Orig. Defendant No.2)
Occupation : Agriculture
Both R/o. Aswali, Tal : Khandala
Dist : Satara

Mr. Dilip Bodake a/w. Ms. Shradha Pawar for the Appellant.

Mr. Vaibhav Gaikwad for Respondent No. 1.

Mr. Ajitkumar Popatlal Shah-Appellant present in person.

CORAM : GAURI GODSE, J.

DATE : 6th AUGUST 2024

ORDER :

1. Heard learned counsels for the parties. This appeal is filed by the original defendant no. 1 to challenge the concurrent Judgments and decrees declaring that the sale deed dated 1st November 2001 executed by defendant no. 2 in favour of defendant no. 1 is *void ab initio* and hence is directed to be cancelled. The decree further directs defendant no. 1 to hand over the vacant and peaceful possession of the suit property to the plaintiff.

2. Learned counsel for the appellant submitted that the suit property was purchased by Mukinda in the name of Vilas, and hence, the suit property was a joint family property of Mukinda. To support his contention that the suit property was purchased by Mukinda in the name of Vilas, learned counsel for the appellant placed reliance on the receipt dated 29th May 1994, which, according to him, indicates that Vilas had no independent source of income, and he had accepted the amount from Mukinda. The plaintiff is the wife of the deceased Vilas.

3. Learned counsel for the appellant also relied upon the document at Exhibit No. 137, which is in the form of an agreement signed by

Vilas, thereby stating that he shall transfer the suit property in the name of Mukinda. He thus submits that the documents on record show that though the sale deed in respect of the suit property was executed and registered in the name of Vilas, it was a joint family property of Mukinda. He thus submits that by way of family arrangement, the suit property was allotted to Sachin (defendant no.2) towards his share on behalf of Pandurang, i.e. Sachin's father.

4. Learned counsel for the appellant relied upon Exhibit No. 154 which is an application signed by Vilas stating that his property be transferred in the name of Sachin. Learned counsel for the appellant thus submits that pursuant to the application made by Vilas, suit property was transferred in the name of Sachin in the Gram Panchayat record. Accordingly, the assessment extracts of the suit property were transferred in the name of Sachin. Learned counsel for the appellant thus submits that the suit property was a joint family property of Mukinda and that Sachin, as co-sharer, has executed a sale deed in favour of defendant no.1. Learned counsel for the appellant submits that there is no dispute that Sachin was the owner of the suit property. However, the suit property being joint family property, Sachin, as a co-

sharer, was entitled to execute the sale deed in favour of defendant no. 1.

5. Learned counsel for the appellant thus submits that inspite of the aforesaid documents, both the courts erred in holding that the suit property was exclusive ownership property of Vilas. He thus submits that both the courts have recorded a perverse finding on the exclusive ownership of Vilas on the suit property. Thus, the learned counsel for the appellant submits that the Second Appeal raises substantial questions of law on the suit property being joint family property, and thus Sachin was entitled to execute the sale deed in favour of defendant no. 1.

6. Learned counsel for respondent no. 1 – original plaintiff supports the impugned judgments and decrees. He submits that the sale deed at Exhibit No. 119 was admittedly executed in the exclusive name of Vilas. He thus submits that Vilas was the exclusive owner of the suit property in view of the registered sale deed dated 26th December 1986. He submits that the plaintiff, being the widow of Vilas, has inherited the property and thus filed the suit based on the exclusive title over the suit property. He submitted that the sale deed in favour of

Vilas was never under challenge. He thus submitted that there was no question that by way of any family arrangement, the suit property could be given to Sachin. He thus submits that the family arrangement or the application filed by Vilas cannot be termed as a document of a valid transfer of the title to Sachin.

7. He further submits that even otherwise, it is not the case of the defendants that any undivided share of Sachin was transferred in favour of defendant no.1. He further submits that the document relied upon by the learned counsel for the appellant in support of the contention that the suit property was a joint family property are not relatable to execution of the sale deed in favour of Vilas. Thus, in the absence of any challenge to the sale deed in the name of Vilas, there was no question of the suit property belonging to the joint family. He thus submits that the suit, which is filed based on title by relying upon a registered sale deed in favour of Vilas, is rightly decreed by both the Courts by declaring that the sale deed executed by Sachin in favour of defendant no. 1 is a void document and thus defendant no. 1 would not get any right to retain the possession of the suit property. He thus submits that the Second Appeal does not raise any question of law.

8. I have considered the submissions made by both the parties. Perused the papers of the Second Appeal as well as the paper book of the district court. The suit is filed on the ground that the plaintiff is the owner of the suit property being the widow of Vilas who had purchased the suit property by way of a registered sale deed dated 26th December 1986. The execution of the sale deed in the name of Vilas is not disputed by any party. A perusal of the written statement of Sachin (defendant no. 2) indicates that he claims exclusive ownership of the suit property based on an agreement executed by Vilas. Thus, a perusal of the pleadings of defendant no. 2 indicates that he claimed exclusive ownership over the suit property and thus executed the sale deed in favour of defendant no. 1.

9. A perusal of the reasons recorded by the trial court indicates that all the documents on record, as well as oral evidence, were examined, and the trial court disbelieved the case of defendant no. 2 that he had any right to execute the sale deed, claiming to be the owner of the suit property. The documents with regard to family arrangement and assessment extracts are also taken into consideration by the trial court and thus held that the document of sale deed in favour of Vilas would

prevail over the gram panchayat record. The trial court has also referred to the pending Regular Civil Suit No. 62 of 2002 for the partition of the joint family properties of Mukinda. It is not in dispute that the suit property is not part of the suit filed for partition of the joint family properties.

10. The case of Sachin (defendant no. 2) appears to be of ownership over the suit property based on the application filed by Vilas before the Gram Panchayat for transferring the property in the name of defendant no.2. The assessment extracts before the gram panchayat, even if in the name of defendant no. 2, the same would not confer any title on defendant no. 2 to transfer the suit property. Thus, in view of the aforesaid reasons recorded by the trial court, this court is not required to examine the evidence with reference to the arguments made on behalf of the appellant that the suit property was a joint family property.

11. The reasons recorded by the trial court and confirmed by the First Appellate court indicate that all the documentary as well as oral evidence was taken into consideration for accepting the exclusive ownership of Vilas over the suit property in view of the registered document of sale deed. It is also important to note that the suit for the

partition of the joint family properties of Mukinda excludes the suit property. Thus, the ground raised on the suit property being joint family property of Mukinda would not require any consideration by this court.

12. The second ground raised with regard to the execution of the sale deed in favour of the appellant by defendant no. 2 as co-sharer does not find any support in the pleading and evidence produced by defendant no. 2. Defendant no. 2's case was that he had exclusive ownership over the suit property and rightly executed the sale deed in favour of defendant no.1. Thus, in view of the pleading of defendant no. 1 regarding his exclusive ownership, the issue with regard to defendant no.2 executing sale deed as co-sharer cannot be considered for the first time in Second Appeal.

13. The reasons recorded by the First Appellate Court indicate that all the documents and oral evidence are reexamined by the court, and the document of sale deed in favour of Vilas is accepted as an absolute document of title of Vilas. Thus, once the sale deed in favour of Vilas is not challenged, I see no reason for defendant no. 2 getting any right to execute the sale deed in favour of a third party. It was sought to be argued on behalf of the appellant that the entire property,

which is the subject matter of the sale deed in favour of Vilas, is not transferred in the name of the appellant; however, the same would not confer any right in favour of defendant no. 2 to execute the sale deed in respect of part of the property which is the subject matter of sale deed in favour of Vilas. Thus, the suit filed by the wife of Vilas seeking declaration and possession is purely based on the title of the suit property. Once there is no valid document conferring any right, title or interest in the favour of defendant no. 2, the sale deed executed by defendant no. 2 in favour of defendant no. 1 would not confer any title in favour of defendant no.1. Thus, for want of any valid document of title defendant no. 1 i.e. present appellant would not be entitled to retain possession of the suit property.

14. I do not find any illegality or perversity in the reasons recorded by both the courts accepting the plaintiff's title through Vilas. Thus, the grounds raised on behalf of the appellant would not require any consideration in the present Second Appeal. The second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

15. In view of the dismissal of the Second Appeal, Civil Application No. 1068 of 2019 is dismissed as infructuous.

16. Learned counsel for the appellant submits that during the pendency of the Second Appeal, the appellant's possession was protected as a statement was made on behalf of respondent no. 1 that the decree would not be executed. He, therefore, submits that the appellant's possession be protected for six weeks.

17. Learned counsel for respondent no.1 does not dispute that such a statement was made. However, he submits that, as per his instructions, the appellant has already vacated the suit property. However, since the decree is for possession of the suit property, the same shall not be executed for six weeks, if not yet executed, subject to the appellant not creating any third party interest or parting with possession in favour of any third party.

[GAURI GODSE, J.]