



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.57 OF 2016

Trimbak Ramchandra Adsul and Ors. ... Appellants.
Versus
Sou. Shalan Haribhau Korde and Ors. ... Respondents.

Mr. V.S. Talkute, for the Appellants.

Mr. Kayval P. Shah, for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 14, 2024

P. C.:

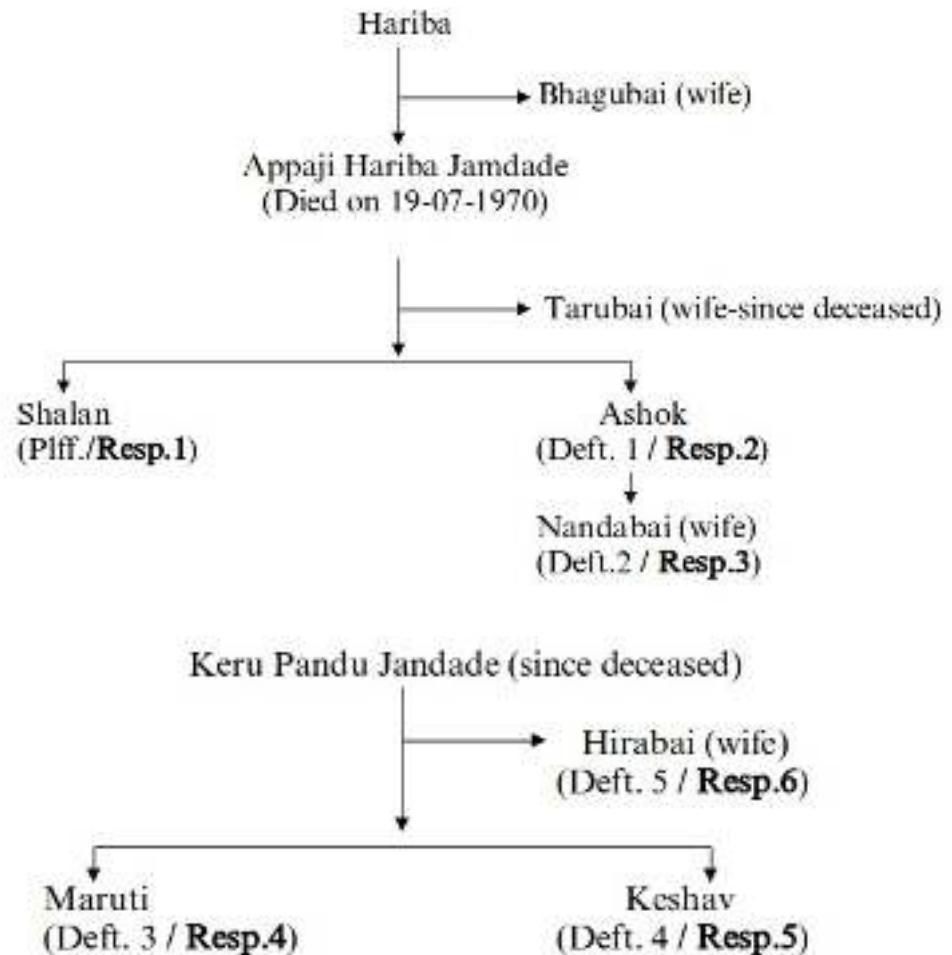
1. At the outset, learned counsel appearing for the Respondent No.1-original plaintiff, on instructions, submits that Clause (3) of the decree of the Trial Court dated 7th January, 2003 to the extent that it declares the four sale deeds executed in favour of the Appellants as void be modified to read that the four sale-deeds are not binding on the share of the plaintiffs. He, on instructions, further consents that Clause (4) of the decree sending the sale-deeds for cancellation under Section 31(2) of the Specific Relief Act, be quashed and set aside and that sale-deeds be held to

be binding on the share of the vendors i.e. original-defendant Nos.1 and 2.

2. Being dissatisfied by the judgment dated 3rd July, 2015 passed by the Appellate Court in Regular Civil Appeal No.259 of 2008, to the extent that the judgment modifies Clause 2 and 5 of the Trial Court's decree re-determining the share of the plaintiff and the Defendant No.1 and Defendant Nos.3 to 5, the purchasers from the defendant Nos.1 and 2 are before this Court i.e. the Defendant Nos.6 to 11 are before this Court. For sake of convenience, parties are referred to by their status before the Trial Court.

3. RCS No.159 of 1997 was filed for partition, declaration and separate possession of the suit properties i.e. Gat No.1647 admeasuring 6H and 43 Are and House property being Gat No.352/2. The defendant No.1 is the brother of the plaintiff and defendant no.2 is the wife of defendant no.1. The defendant nos.3 to 5 belong to the branch of cousin brother of the plaintiff's father and the defendant Nos.6 to 12 are the subsequent purchasers from

Defendant Nos.1 and 2. For better understanding of the relationship interse, the genealogy is reproduced as under:



4. The plaintiff had come with the case that the property is the ancestral property of Appaji and as such, she is entitled to partition and separate possession of her share in the ancestral properties, which included the house property and that the sale-deeds dated 15th April, 1997, 19th May, 1997 and 31st May, 1997 are not binding on her share and that the same are void and

illegal.

5. The suit came to be resisted by the defendant Nos.1 and 2 as well as the defendant nos.6 to 11. The case of the defendant Nos.1 and 2 was that of denial of the plaintiff's share in the suit property. As regards the sale-deeds which were executed by the defendant Nos.1 and 2 it was contended that the defendant No.1's mother and grandmother, who expired in the year 1992, were seriously ill for a period of one year prior to their death and the defendant no.1 had taken loans for their medical treatment. It was also contended that the defendant no.1 has spent huge amount on developing the lands i.e. digging of the Well, for pipeline, for electric motor, for levelling the land and for lift irrigation and also he has spent the money on construction of the house and as such, the suit property was sold for legal necessity.

6. The defendant Nos.3 to 5 did not participate in the proceedings and the suit proceeded *ex parte* against them. The contention of defendant nos.6 to 11 was that to repay the loan taken for development of the suit land as well as the expenses incurred on account of the illness of the mother and the grandmother, the defendant no.1 had mortgaged the property in

the year 1994 and paid off the debts and the loans. It was contended that for the purpose of repaying the mortgage and for construction of the house, the defendant No.1 and 2 have sold the suit property to defendant nos.6 to 12 by registered sale-deed.

7. The parties went to trial. The trial Court held that the properties are the ancestral properties of the plaintiff and the defendant Nos.1, 3 to 5 and that Plaintiff has $\frac{1}{4}$ share in the suit land and $\frac{1}{2}$ share in the suit property. The trial Court held that the sale-deeds were not executed for legal necessity and as such, are not binding on the share of the plaintiff. The trial Court declared the sale-deeds to be void and directed the sale deeds to be sent for cancellation.

8. As against this, the original-defendant Nos.6 to 11 preferred Regular Civil Appeal No.259 of 2008. The Appellate Court after framing the necessary points for determination held that the suit property is the joint family property of the plaintiff and the defendant nos.1, 3 to 5 and answered the issue of legal necessity against the Defendant Nos.1 and 2. The Appellate Court held that the plaintiff and Defendant No.1 have $\frac{1}{4}^{\text{th}}$ share and are entitled to partition and separate possession of $\frac{1}{4}^{\text{th}}$ share in the suit

land and ½ share in the suit property and modified Clause 2, 5 and added Clause 9 (a) and maintained the rest of the decree.

9. Heard Mr.Talkute, learned counsel for the Appellants and Mr.Shah, learned counsel for the Respondents.

10. Mr. Talkute, learned counsel appearing for the Appellants would submit that the sale-deeds were executed on account of legal necessity and the evidence in that respect was adduced by the defendants before the trial Court. He submits that substantial question of law arises as there is misreading of evidence on the aspect of legal necessity. Pointing out to the pleadings in the written statement, he submits that the necessary pleadings were incorporated in the written statement as regards the legal necessity, however, the Appellate Court has held that as the written statement did not incorporate the necessary details as regards the amounts which were obtained by way of mortgage and the expenses which were incurred, the evidence beyond the pleadings is not admissible. He would further submit that while modifying the share of the plaintiff, the Appellate Court failed to consider that as regards the properties standing in the name of Appaji, there is notional partition and as such, the share of Appaji would

devolve upon the plaintiff as well as the defendant no.1. He would further submit that the defendant no.1– Ashok had not challenged the sale-deeds and while modifying the decree, the Appellate Court ought to have held that the sale deeds are not binding on the share of the plaintiff but on the share of the defendant No.1-Ashok and Defendant No.2, who have alienated the property.

11. *Per contra*, learned counsel appearing for the Respondents would point out the detailed reasoning of the Appellate Court on the issue of legal necessity. He submits the Appellate Court on a proper appreciation of the evidence has held that the defendants have failed to prove legal necessity and the concurrent findings of facts are not required to be disturbed. He would further submit that the suit property devolved upon Appaji was not through his father Hariba but through his uncle - Tukaram Mali and as such, it was not the ancestral properties but joint family property. He submits that upon death of Appaji, the plaintiff and the defendant no.1 inherited $\frac{1}{2}$ share of Appaji and as such, the Appellate Court has rightly determined the share of the plaintiff.

12. Considered the submissions and perused the record.

13. The findings of the Appellate Court are assailed on three

grounds. Firstly, that the evidence as regards the legal necessity has not been properly appreciated by the Trial Court and the Appellate Court and there is perversity of findings which gives rise to the substantial question of law; secondly, that the share of Appaji had to be carved out by notional partition prior to his death and the shares have not been properly determined; and thirdly, that the sale-deeds ought not to be declared as void qua the Defendant Nos.1 and 2 and sent for cancellation as Defendant No.1-Ashok had not challenged the same and the decree is required to be modified as not binding on the share of Plaintiff. As regards the third ground, learned counsel for the Respondents, at the outset, consented that the same can be modified to read that the sale-deed is not binding qua the share of the plaintiff and that the same will be binding only on the share of the defendant no.1-Ashok.

14. In the written statement, the case of the defendants was that the defendant No.1's mother and grandmother expired in the year 1992 and prior to that for about one year, they were seriously ill. It was contended that for their illness, loans were taken as also for the purpose of development of the lands, digging of the Well,

laying of pipeline, electric motor, levelling of land, installation of lift irrigation facility and construction of house and for that purpose loan was taken. The Appellate Court has considered each and every case of legal necessity as pleaded in the written statement. During the evidence, the defendant no.1 has pleaded that prior to the sale deed he had mortgaged the land in 1994-1995 to the husband of the defendant No.9-Godabai and one Suman Lokhande, for a period of five years on accepting a sum of Rs.1,45,000/-, and out of the said mortgage amount, the money was spent for the medical treatment of the mother and the grandmother and certain amount was spent for digging Well in the suit land and for installing electric motor pump and laying pipeline in the suit land. The Appellate Court noted the fact that the mother and grandmother had expired in the year 1992-1993 and the sale deeds have been executed after five years of death of the mother and grandmother. The Appellate Court noted that there is no pleading in the written statement as regards the digging of Well and that the 7/12 extracts show that since beginning there was Well water in the suit land. As regards the expense towards the installing the facility of lift irrigation from canal to the suit land,

the Appellate Court noted that towards the lift irrigation scheme amount of Rs.25,000/- was paid in the year 2000 and held that it is not probable that the sum was paid in the year 2000 out of the mortgage money received in the year 1994-1995. Considering the record, the Appellate Court has rightly appreciated the evidence on record as regards the legal necessity. From reading of the evidence and findings of the Trial Court and Appellate Court, no perversity is discernable.

15. As regards the modification of the share of the plaintiff is concerned, the Appellate Court on the basis of the evidence that the property had come from Tukaram Mali i.e. uncle of Appaji has held that the property is joint family property. That being so, there is no question of any notional partition. Being the joint family property after the death of Appaji, the Plaintiff and the Defendant No.1 each would be entitled to $\frac{1}{2}$ share in $\frac{1}{2}$ share of Appaji in the suit land.

16. Considering the findings of the Trial Court and the Appellate Court, no substantial question of law arises in the present case. Having regard to the concession given by the learned counsel for the Respondent No.1-plaintiff, on instructions, Clause 4

of the decree of the Trial Court dated 7th January, 2003 is set aside and Clause 3 is modified as under:

“3. It is hereby declared that the sale-deed dtd. 5-4-1997 executed by defendant No.2 in favour of defendants No.6,7 and 8, and the sale deed dtd.19-5-1997 executed by defendant No.1 in favour of defendant No.9, and the sale-deed dtd. 19-5-1997 executed by defendant No.1 in favour of defendants No.10 and 11, and the sale-deed dtd. 31-5-1997 executed by defendant No.2 in favour of defendant No.12, in respect of suit land Gat No.1647 of village Saswad, Tal. Phaltan, Dist. Satara are void and not binding on the share of the plaintiff and would bind only the share of Defendant No 1 and 2.”

17. Except Clause 3 and 4 of the decree dated 7th January, 2003 as indicated above, the rest of the decree remains undisturbed. Second Appeal is disposed of in the above terms.

(Sharmila U. Deshmukh, J.)