

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.258 OF 2016

WITH

CIVIL APPLICATION NO.477 OF 2016

IN

SECOND APPEAL No. 258 OF 2016

Sou. Malan Pralhad Satav

...Appellant/
Applicant

Versus

Shri. Ramdas Sakharam Bhadale
(Thr. His Legal Heirs)

Parvati Ramdas Bhadale & Ors.

...Respondents

Mr. Adhik Kadam Mr. Sandeep Phatak for the Appellant/Applicant.

Mr. Prafulla Shah i/b Mr. Kayval P. Shah for Respondent Nos.5 and 6.

Mr. Rohit Joshi for Respondent Nos. 7 to 12.

Mr. S. C. Wakankar for Respondent Nos. 15a & 16.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 15, 2024

P. C. :

1. Before this Court, it was pointed out that the Defendant Nos. 8 and 10 have expired and by order dated 8th January, 2024 this Court had directed the learned counsel for the Appellant to take necessary steps

before the next date failing which the Second Appeal stands dismissed qua the deceased Respondents. Today learned counsel for Appellant submits that he has no instructions in this regard and as such, the order dated 8th January, 2024 being conditional order the Appeal stands dismissed as against Respondent Nos. 8 and 10.

2. Being dissatisfied with the Judgment of the Appellate Court dated 23rd November, 2015 dismissing the appeal, the Appellant-original Plaintiff is before this Court.

3. Special Civil Suit No. 633 of 2001 was filed by the Plaintiff for partition, separate possession and declaration that the sale deed executed by the Defendant Nos. 1 to 4 in favour of the other Defendants are null and void and not binding on the Plaintiffs share and for injunction. The suit properties were described as land Gat No. 1389 (old Gat No. 2375) admeasuring 7.63 H, Gat No. 1322 (old Gat No. 2308/1 & 2308/2) admeasuring 8.67 H, Gat No. 659/1 admeasuring 2.25 H and Gat No. 659/2 admeasuring 2.25 H of village Wagholi, Taluka Haveli, Dist- Pune. The case pleaded by the Plaintiff was that the Original Ancestor i.e. Sakharam had three wives, Sitabai, Muktabai and Devubai. Sakharam expired on 19th April, 1972. Sitabai and Muktabai died issueless. The third wife Devubai had two sons and three daughters. Devubai and one of the daughter are the Plaintiffs in the suit. It was contended that the suit

properties are ancestral properties and after demise of the original ancestral Sakharam, the suit properties were inherited by the Plaintiffs and Defendant Nos. 1 to 4. The cause of action pleaded in the plaint was that they had received the notice from the Circle Officer Wagholi as regards the mutation entry Nos. 4794 and 4795 and upon enquiry they came to know that the Defendant Nos. 1 to 4 had sold 5 acre land to Defendant Nos. 5 and 6 each by Registered Sale Deed dated 15th July, 1996 without the consent of the Plaintiffs. It was pleaded that partition was sought, however the same has been refused. It was further pleaded that upon the search of the records, it was found that the Defendant Nos. 1 to 4 had played fraud and have sold the properties by different sale deeds to Defendant Nos. 7 to 14 and recently sold 4 H, 50 R land out of Gat No. 659 to Defendant Nos. 15 and 16 by sale deed dated 13th December, 1977. It was pleaded that there was no legal necessity to alienate the ancestral properties. It was further pleaded that the Plaintiff No. 1 is blind and not aware of the execution of the sale deed and that the Plaintiff No. 2 was minor at the relevant time.

4. The suit came to be resisted by the subsequent purchasers. As far as the Defendant Nos. 5 and 6 are concerned, it was contended by Defendant No. 5 that the suit properties as sold from time to time were partitioned and the Defendant Nos. 5 and 6 purchased the suit properties

in the year 1996 and were put in possession of the said property pursuant to the execution of registered sale deed executed in their favour. It was contended that the Plaintiffs were aware about the transaction and had not objected to the same.

5. As regards the Defendant Nos. 7 to 12, it was contended that the suit is time barred and that the Plaintiffs and the Defendant Nos. 1 to 4 are in collusion with each other. It was also contended that the plaint is lacking as regards the pleadings pertaining to the sale deed executed in favour of Defendant Nos. 7 to 12. It was further contended that the sale deeds have been signed by the Plaintiffs as well as the Defendant Nos. 1 to 4 and that prior to the execution of the sale deeds, public notice was also issued. It was further contended that the alienation has taken place after payment of the entire consideration. It was also contended that in previous litigation, the Defendant Nos. 7 to 12 have been held to be in possession of suit lands and injunction has been granted in their favour. It was also contended that Plaintiff along with Defendant Nos. 3 & 4 filed suit against these Defendants which was dismissed.

6. As regards the Defendant No. 13 and 14, it was contended that the property was purchased by sale deed dated 13th May, 1992 and there was no prayer for setting aside the sale deed. The Defendants also raised the issue of limitation. The Defendants contended that the sale was executed

for legal necessity for repayment of loan of District Land Development Bank.

7. The parties went to trial and the Trial Court by judgment dated 8th May, 2013 declared that the Plaintiff No. 2 and Defendant Nos. 1 to 4 each have 1/5 share in the suit properties except those transferred to Defendant Nos. 5 to 16 and that the Plaintiff No. 2 is entitled to partition and separate possession of her share out of balance land except lands transferred to Defendant Nos. 5 to 16. The Plaintiffs challenged the judgment by way of Civil Appeal No. 439 of 2013, which came to be dismissed by judgment dated 23rd November, 2015.

8. Heard Mr. Adhik Kadam for the Appellant, Mr. Prafulla Shah for Respondent Nos.5 and 6, Mr. Rohit Joshi for Respondent Nos.7 to 12 and Mr. S. C. Wakankar for Respondent Nos.15a & 16.

9. Learned counsel for the Appellant submits that question of law arising is the application of correct Article of Limitation Act and that provisions of Article 53 of the Limitation Act would apply. He would submit that as the suit was for declaration to set aside the instrument of sale, the limitation period was three years. He would further submit that the Plaintiff was a minor at the time of execution of the sale deed and immediately upon acquiring knowledge of the execution of the sale deed,

the suit was filed seeking partition and separate possession, for which limitation is 12 years.

10. *Per contra*, learned counsel for the Respondent Nos. 7 to 12 would submit that the Plaintiff were aware of the alienation inasmuch as there were previous litigation between the parties. He would submit that the present Plaintiff Nos. 1 and 2 and Defendant Nos. 3 and 4 had filed Special Civil Suit No. 1292 of 1999 against the Defendant Nos. 7 to 12 in which all the five sale deeds executed in favour of these Defendants were challenged which came to be dismissed in default. He would further submit that the Defendant Nos. 7 to 12 had instituted proceedings against the Defendants in which there is a specific finding of title in favour of the Defendants. He would further submit that the Plaintiff's case of being minor at the time of execution of the sale deed would necessitate the filing of the suit within a period of three years from the date of attaining of majority which was in the year 1984 and being in know of the alienation, the issue of limitation was rightly answered against the Plaintiff.

11. Mr. Wakankar, learned counsel for the Respondent Nos. 15 and 16 would support the contention of Mr. Joshi and would submit that the challenge if any is required to be made within a period of three years from attaining majority. Mr. Shah, learned counsel for Respondent Nos. 5 and

6 submits that the sale deeds have been executed in the year 1996 and the Defendants have not sold land more than their share and therefore there is no question of any legal necessity .

12. Considered the submissions and perused the records.

13. The Trial Court as well as the Appellate Court has rendered concurrent findings as regards the issue of limitation as well as on the issue of Order II Rule 2 of the Code of Civil Procedure. The previous litigation between the parties is not in dispute. The Trial Court has rendered a specific finding as regards the litigation instituted in respect of the sale deeds executed in favour of Defendant Nos. 7 to 12. Pertinently, the present Appellant was a party to Regular Civil Suit No. 820 of 1998 filed by Defendant Nos. 7 to 12 against Defendant Nos. 1, 2 and Plaintiffs . The Plaintiffs had filed Special Civil Suit No. 1292 of 1999 challenging the sale deeds bearing No. 3240 dated 18th May, 1983, No. 3241 dated 18th May, 1983, No. 3242 dated 18th May, 1983, No. 7926 dated 8th October, 1984 and sale deed No. 7571 dated 30th July, 1985 pleading fraud. The cause of action for partition accrued to the Plaintiffs at the time of filing the suit of 1999 and as such, the instant suit is hit by Order II Rule 2 of CPC.

14. The question of law according to the learned counsel for the

Appellant is that the issue of limitation cannot be answered against the Plaintiff as the provisions of Article 59 will apply in the present case. Perusal of Article 59 of the Limitation Act, would indicate that the period of limitation of three years commences when the facts entitling the Plaintiffs to have the instrument or decree cancelled or set aside first becomes known to the Plaintiffs. The Trial Court has recorded a finding that sale deeds are executed by the Plaintiffs No. 2 through her guardian husband. The sale deeds are of year 1983. As such the Trial Court has rightly applied the provisions of Article 60 of Limitation Act. As regards the sale deed in favour of Defendant Nos. 13 & 14, the Trial Court has held that the land sold by Defendant Nos. 1 to 4 is within their share. As far as sale deed in favour of Defendant Nos. 5 & 6 is concerned, the Trial Court has come to a finding that the Defendant Nos. 1 to 4 have not sold land more than their share and Plaintiffs can claim their share. As far as sale deed in favour of Defendant Nos. 15 & 16 is concerned, the sale deed has been executed by the Plaintiff No. 1 as guardian of minor Plaintiff No. 2. The Trial Court has held that sale deed was executed about 36 years back.

15. Without any specific pleading and evidence as to the acquisition of knowledge of the sale deeds, the suit is required to be filed within 3 years of attaining majority. Section 6 of the Limitation Act deals with the legal

disability and provides that when the person is minor at the time when the prescribed period of limitation is to be reckoned, he may institute the suit within the same period after the disability is ceased.

16. In view of the discussion above, the Trial Court has rightly answered the issue of limitation against the Plaintiff based on proper appreciation of the evidence. The Appellate Court has c with the findings of the Trial Court and learned counsel for the Plaintiff has not been able to demonstrate any perversity of findings. The submissions of Appellant are in the realm of re-appreciation of evidence which is impermissible under Section 100 of CPC.

17. In view of the above discussion, no substantial question of law arises in the Second Appeal. Appeal stands dismissed.

18. In view of dismissal of Second Appeal, Civil Application does not survives for consideration and the same is disposed of as such.

(SHARMILA U. DESHMUKH, J.)