



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.75 OF 2024

Parvin Sultana Abdul Salim

.VS.

Shaikh Mohiuddin Mohammad Hatam

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Abhijit Deshpande, Advocate for the appellant

CORAM : G.A. SANAP, J.
DATE : APRIL 26, 2024.

Heard learned Advocate for the appellant/
original defendant, at the stage of admission. I have gone
through the record and proceedings.

2. The appellant is the daughter of the respondent.
The respondent filed the suit seeking a decree of
permanent injunction restraining the appellant from
disturbing his exclusive possession over the suit property,
described in the plaint and in the alternative, he also
prayed for a decree of partition and separate possession of
his share in the suit property. It is the case of the
respondent that the suit property was given in Maher to
his wife, who died on 03.06.1973. The appellant, who is

his daughter, is married and residing with her husband. The respondent further pleaded that the appellant started disturbing his possession over the suit property. He, therefore, filed the suit seeking a decree of permanent injunction.

3. The appellant filed the written statement in the suit and denied the averments made in the plaint. She contended that during the lifetime of her mother, her mother orally gifted the suit property to her. She further contended that on the basis of the said oral gift deed, she became the absolute owner of the property and continued to be in possession of the property. She further contended that in the occupancy column of the 7/12 extract her name was recorded.

4. The parties adduced the evidence before the trial Court. Learned trial Judge rejected the defence of the appellant as to the right in the property on the basis of the oral gift deed. The trial Judge recorded the finding that the respondent was in exclusive possession of the suit property and therefore, granted a decree for permanent injunction. The trial Judge did not address

the issue of the partition and separate possession, framed on the basis of the pleadings of the respondent.

5. The appeal was filed before the District Court, Achalpur by the appellant. Learned Judge of the appellate Court reversed/modified the judgment and decree passed by the learned Judge of the trial Court. As far as the finding as to the right of the appellant on the basis of the gift deed is concerned, the learned Judge of the appellate Court has maintained the same. Learned Judge has decreed the suit for partition and possession of the separate share of the appellant. As far as this part of the judgment and decree of partition and separate possession is concerned, the fate of the same depends on the finding on the point of the oral gift deed as alleged by the appellant in her favour by her mother.

6. On going through the record and proceedings, I am constrained to observe that in this appeal substantial question of law does not arise at all. The Courts below have concurrently held that the appellant has miserably failed to prove the oral gift of the property by her mother in her favour. The respondent was the natural guardian

of the appellant as per Muslim personal law. The respondent has nowhere admitted the acceptance of any gift of the suit property on behalf of the appellant. The appellant has not adduced any independent evidence to prove the acceptance of the gift on her behalf, *inasmuch* as at the time of the purported oral gift she was hardly 5 to 6 years old. There is no evidence adduced by the appellant as to the acceptance of the gift deed. The Courts below have held that, therefore, in the absence of the acceptance of the gift by the guardian of the appellant, the gift deed was not legal and valid. On going through the judgment and order passed by the Courts below I am satisfied that the Courts below have not committed any mistake or perversity. This finding is based on a proper appreciation of the evidence. On this ground, therefore, the substantial question of law does not arise.

7. It is further pertinent to note that the appellant even by way of an alternate plea did not file a counter claim. The respondent by way of an alternate relief pleaded for partition and separate possession of his share in the property, being the legal heir of his deceased wife.

The trial Court did not address this issue. However, in the appeal filed by the appellant against the judgment and decree passed by the trial Court, the appellate Court has addressed this issue and crystallized the shares of the appellant and respondent in the property. The appellate Court has passed the decree for partition and separate possession with a direction to the authority to effect the partition. In my view, this relief granted without any counter claim, in my opinion, is a blessing in a disguise for the appellant. In the teeth of the finding on the point of the validity of the gift deed, the judgment and order passed by the appellate Court does not warrant interference. The concurrent findings of fact are based on a proper appreciation of the evidence. As such, no substantial question of law arises in this appeal. As such, the appeal stands dismissed.

8. The second appeal disposed of accordingly. Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)

Namrata