



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

SECOND APPEAL NO. 366/2007

Vishwas Gruha Nirman Society Ltd.
Through the Secretary Shri Shriram
S/o Nilkanthrao Kale (Now President)
R/o.Chakradhar Nagar, Chhota Tajbag,
Nagpur. New Address 24A, New Subhedar
Layout, Nagoba Mandir, Hudkeshwar Road,
Nagpur.**APPELLANT**

...V E R S U S...

- 1) Dilip S/o Nilkanth Kaithe,
aged about 37 years, Occu. Labour,
- 2) Rajesh S/o Nilkanth Kaithe,
(Dead: Deleted in Appeal)
- 3) Smt.Anita W/o Pradip Jugale,
aged about 35 years, Occ. Household,
- 4) Ku.Guddi D/o Nilkanth Kaithe,
aged now Major;
- 5) Ku.Sangita d/o Nilkanth Kaithe,
now Major;
- 6) Ku.Nitu D/o Nilkanth Kaithe,
Aged 12 years, Occu. Student,
- 7) Ku.Chitu d/o Nilkanth Kaithe,
(Dead: Deleted in Appeal)
- 8) Smt.Leelabai Wd/o Nilkanth Kaithe,
(Dead : Deleted in Appeal).

All R/o Bhande Plot, Umrer Road,
Nagpur.**RESPONDENTS**

Mr. C. N. Deshpande, Advocate for appellant.

Mr. P. S. Khubalkar, Advocate for respondent Nos. 1 and 3 to 6.

CORAM:- ANIL L. PANSARE, J.

DATED : 16.04.2024

JUDGMENT

Heard Mr. C. N. Deshpande, learned counsel for the appellant and Mr. P. S. Khubalkar, Advocate for respondent Nos. 1 and 3 to 6. Respondent Nos. 2, 7 and 8 are dead.

2. The appeal has been admitted on the following substantial question of law.

“Whether the Courts below were justified in drawing a presumption that the property in the hands of Nilkanth Kaithe took the character of joint family property in the absence of making out a case of sufficient nucleus being available?”

3. The respondents-plaintiffs had filed a suit against the appellant-defendant, seeking declaration that they are owners of the suit property, with a further prayer of cancellation of sale deed dated 29.11.1984, executed between the predecessor-in-title of the respondents in favour of the appellant society.

4. According to the respondents, the suit property is an agricultural land, bearing Survey Nos.72-73, admeasuring 32R, situated at mouja Dighori, Nagpur. The respondent Nos. 1 to 7 are the sons and daughters of one Nilkanth Kaithe (Since deceased),

the respondent No.8 is his widow. Nilkanth expired on 01.08.1985. The respondents alleged that Nilkanth's father i.e. grandfather of respondent Nos.1 to 7, had given four bangles of gold weighing four Tola, one Mangalsutra weighing one Tola to the respondent no.8 for purchasing the suit property. The property was to be purchased by Nilkanth for his father. As such, the plaint is silent but I am informed that Nilkanth purchased the suit property, sometimes in the year 1959. The sale deed has been not placed on record. It is, therefore, not known as to the manner in which the payment of the consideration was made by Nilkanth.

5. The respondents have then alleged that Nilkanth has executed the sale deed on 29.11.1984 in favour of the appellant, without knowledge of the respondents. The suit property is said to be an ancestral property, on the ground that Nilkanth's father has arranged funds and out of the said funds, which were meant for the joint family, Nilkanth had purchased the suit property and was thus joint family property.

6. Both the Courts below have rendered a concurrent finding that the sale deed dated 29.11.1984, executed by Nilkanth in favour of the appellant, is valid to the extent of share of

Nilkanth, but is not binding on the respondent Nos.1 to 8 to the extent of their shares. The Courts below were of the view that Nilkanth had purchased the property from the funds of the joint family.

7. Having heard both sides and having gone through the record, the only question that requires answer is, whether the concurrent finding rendered by the Courts below is perverse? The answer is certainly in the affirmative. Both the Courts below have rendered a finding based upon the hearsay evidence.

8. The first witness examined by the respondents is respondent No.1 – Dilip. He deposed that his grandmother had informed him that Nilkanth has purchased the suit property out of the common funds. Thus, the evidence on the funds utilized by Nilkanth is hearsay. In fact, respondent No.1 and, for that purpose, respondent Nos.1 to 7, were not even born at the relevant time.

9. The evidence of the respondent No.8, the second witness and the wife of Nilkanth, show that she got married to Nilkanth in the year 1962. Thus, she was not residing with Nilkanth in the year 1959. She deposed that she got to know

about these facts from her in-laws. Thus, her evidence on the point of common funds of the joint family is also hearsay. Despite such status, she pleaded in plaint that Nilkanth's father had given to her four bangles and one mangalsutra. Thus, apparently, a false story is narrated in the plaint. The Respondents have, thus, indulged into an unfair practice to get favourable result. Such practice is highly deprecated. The plaint is liable to be rejected on this count alone.

10. Even otherwise, learned counsel for the respondents could not show any admissible evidence to show that Nilkanth's father has provided him gold ornaments and further that the suit property was purchased by selling the said ornaments. Rather, she deposed that the suit property was purchased by her father-in-law in the name of Nilkanth. As against, her case before the Trial Court was that Nilkanth's father provided funds to purchase the property for him (Nilkanth's father). There is, thus, inconsistency in the pleadings and the evidence led before the Trial Court. This inconsistency, coupled with false claim of respondent No.8, is a proof of concocted story of the respondents.

11. Be that as it may, the fact remains that the respondents failed to lead any admissible evidence to prove that Nilkanth's

father had provided gold ornaments and further that Nilkanth had purchased the suit property by selling those ornaments. In absence thereof, the Courts below could not have rendered a finding that the suit property is a joint family property. They have believed the hearsay evidence, which is contrary to the law of evidence. The finding, therefore, is perverse.

12. It is worth noting that Nilkanth's father, in his lifetime, has not taken any objection to Nilkanth purchasing the suit property in his name. The theory has come up subsequent to the death of Nilkanth's father as also of Nilkanth. This theory appears to be an after thought and speaks volumes of the respondents' conduct.

13. The counsel for the respondents has relied upon judgment in *Nazir Mohammad Vs. J. K. Kamala and Ors., (2020) 19 SCC 57*, to contend that general rule is that the High Court will not interfere with the concurrent findings of the Courts below. The Supreme Court has held that the said rule is not absolute but is subject to the well recognized exceptions viz. (i) the Courts below have ignored the material evidence or acted on no evidence; (ii) the Courts below have drawn wrong inference from the proved facts by applying the law erroneously. Or; (iii) the Courts below

have wrongly cast burden of proof.

14. In the present case, the Courts below have rendered a finding on an inadmissible evidence and, therefore, can be said to have acted on no evidence at all.

15. Mr. Khubalkar has then relied upon *Baikuntha Nath Paramanik (Dead) by his L.Rs. And Heirs .VS. Sashi Bhushan Pramanik (dead) by his L.Rs. And ors.;* (1973) 2 SCC 334, to contend that under Hindu Law, when a joint family is found to be in possession of nucleus sufficient to acquire the property then a presumption arises that the property stands in the name of the persons who were in the management of the family properties or belonging to the joint family and further that in joint family, if Karta has purchased the property, it would be presumed to be belonging to the joint family and the burden to prove that the properties purchased by Karta were not joint family properties but self acquired properties lies on the person claiming so.

16. In my view, the above judgment will be of no assistance inasmuch as the facts in the present case do not disclose that Nilkanth was Karta of the family. In the lifetime of Nilkanth's father, unless otherwise proved, Nilkanth's father would be Karta

of the family. It is nobody's case that Nilkanth's father has purchased the suit property. The respondents have come up with a case that after death of Nilkanth's father, Nilkanth has sold the suit property, which was purchased out of nucleus of the joint family and, therefore, is the joint family property. Their case is based on the hearsay evidence and, therefore, stands not proved. More importantly, the respondents and particularly respondent no.8, has filed the suit which is based on a false statement that Nilkanth's father had handed over to her the ornaments for purchasing the suit property. As noted earlier, the suit property was purchased in the year 1959 and respondent no.8 married Nilkanth in the year 1962. Therefore, there arises no question of Nilkanth's father handing over the ornaments to the respondent no.8, who was not even part of the family.

17. In the circumstances, the Courts below were not justified in drawing a presumption that the property in the hands of Nilkanth took the character of a joint family property when the respondents failed to make out a case of sufficient nucleus being available. The substantial question of law is answered accordingly.

18. Resultantly, the judgments passed by the Courts below are unsustainable. Hence, following order.

ORDER

- (i) The appeal is allowed.
- (ii) Judgment and order dated 29.01.2007 passed by Ad hoc District Judge 11, Nagpur in Regular Civil Appeal No.341/1994 so also judgment and decree dated 29.04.1994 passed by 5th Jt. Civil Judge Junior Division, Nagpur in Regular Civil Suit No.955/1989 are quashed and set aside.
- (iii) Regular Civil Suit No. 955/1989 stands dismissed.
- (iv) Parties to bear their own costs.

(Anil L. Pansare, J.)

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