



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

SECOND APPEAL NO.89 OF 2024

Manohar s/o Tikaramji Lanjewar
VS.

Smt. Shantabai wd/o Gadiramji Wadibhasme and Ors.

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

Mr. R.G. Puranik, Advocate for appellant.

CORAM : G.A. SANAP, J.
DATE : 25th APRIL, 2024.

Heard learned Advocate for the appellant at length.

2. The facts relevant for decision of this appeal can be stated in a nutshell as follows:

The suit was filed by Smt. Kausalyabai w/o Tikaram Lanjewar, since deceased, for partition and separate possession of 1/3rd share in the suit property described in the plaint. It is undisputed that common ancestor Gadiram Wadibhasme owned 37.92 hectares agricultural land. Champabai Malewar and Kausalyabai are the daughters of the deceased Gadiram. The original defendant No.1, since deceased was the widow of Gadiram. After the death of

Kausalyabai during pendency of the suit, her legal heirs were brought on record as plaintiff Nos.1 (a) to 1 (c). According to the plaintiffs, there was no partition of the suit property either during the life time of Gadiram or after his death till filing of the suit. They contended that three legal heirs of Gadiram have 1/3rd share each in the suit property. The plaintiffs further contended that the sale deed executed by the deceased defendant No.1 in favour of the defendant No.6 was without the partition of the ancestral property by metes and bounds and as such was not legal and valid.

3. The defendants filed their respective written statements. They opposed the suit. All the defendants in unison contended that after the death of Gadiram in the year 1975 there was an oral partition of the property and three legal heirs of deceased Gadiram were allotted their 1/3rd share each in the suit property. They further contended that they were put in possession of their respective share in property. They further contended that this oral partition cum family arrangement was given finality in the year 2003-04. The defendant No.6 contended that on the date of sale deed the deceased defendant No.1 was the absolute owner of the property and therefore, the sale deed was legal and valid. Besides they contended that neither plaintiffs nor the remaining defendants challenged the said sale deed by filing

any proceeding in the court of law.

4. The parties adduced the evidence before the trial Court. On consideration of the evidence, trial Court recorded a finding that suit property was ancestral property of the plaintiffs and defendant Nos.1 to 6. The trial Court has also recorded a finding that the plaintiffs have 1/3rd share in the suit property. The trial Court recorded a finding that the sale deed executed by the deceased defendant No.1 of her 1/3 share in the property in favour of defendant No.6 was legal and valid. The trial Court recorded a finding that in terms of the family arrangement/oral partition three share holders are occupying their respective share. The trial Court further held that after oral partition the deceased plaintiff continued to possess her 1/3 share till her death and after her death legal heirs have been in possession of the said share.

5. Plaintiff No.1-a Manohar Lanjewar alone filed the appeal against impugned judgment and decree. The original plaintiff No.b and c were arrayed as respondents in the appeal. The learned Judge of the appellate Court, on re-appreciation of the evidence confirmed the findings of fact recorded by the learned trial Judge on all the issues and dismissed the appeal. The original plaintiff No.1-a has come in second appeal before this Court.

6. I have heard learned Advocate Mr. R.G. Puranik for the appellant. Perused the record and proceedings.

7. Learned Advocate submitted that the findings of fact recorded by the courts below are contrary to the evidence. Learned Advocate further submitted that the courts below have misinterpreted the evidence. Learned Advocate submitted that relevant facts and relevant evidence was not considered to arrive at decision by the courts below. Learned Advocate therefore, submitted that substantial questions of law as set out in the memo of appeal arise in this second appeal and therefore, the appeal needs to be admitted on the substantial questions of law.

8. On going through the record and findings of fact recorded by the courts below, I do not find any substance in this appeal. It is evident on perusal of the reasons recorded by the courts below that no substantial question of law at all arises in this appeal. It is undisputed that the partition of the property even if proved to be oral partition cannot be reopened. The partition of the property can be re-opened in an exceptional circumstances. In this case, it is the contention of the appellant that there was no partition at all of the property left behind by Gadiram. The courts below on appreciation of evidence and more particularly the evidence of plaintiff No.1-b, wherein, he has categorically admitted

that after death of Gadiram in 1975, there was an oral partition and 1/3 share each was given in possession of three share holders. The admission given by plaintiff No.1-b in his evidence, about the oral partition of the suit property in 1975 in three equal shares has caused serious damage to the claim of the plaintiffs. The evidence of plaintiff No.1-b has supported the contention of defendants. It is further seen that widow of Gadiram during her lifetime sold her 1/3 share i.e. 12.64 hectare land to defendant No.6. It is the contention of defendants that the ancestral property was divided in three equal shares i.e. 12.64 H.R. The deceased defendant No.1 the widow of Gadiram sold her share. The courts below have concurrently held that the said sale deed was legal sale and valid. It is undisputed that the land in possession of the deceased plaintiff was admeasuring 13.84 H.R. This fact would indicate that separate share was allotted in the property to deceased-plaintiff. Otherwise she had no reason to separately occupy and possess 13.84 HR land. The courts below have concurrently held that there was oral partition in 1975. The courts below have also concurrently held that there was a family arrangement which was recorded in 2003-04. As per family arrangement, parties continue to occupy their respective share.

9. It appears that legal heirs of original plaintiff seems to

have aggrieved by the execution of the sale deed by deceased defendant No.1 in favour of defendant No.6. Perusal of the record would show that neither in this proceeding nor by adopting separate proceedings the said sale deed has been challenged either by original plaintiff or her legal heirs. The courts below have held that the sale deed was legal and valid. The oral partition of the suit property in the year 1975 has been proved. The oral evidence of the defendant No.1-b on this point has been corroborated by contemporaneous documentary evidence. It is undisputed that the separate and independent share of the agricultural land admeasuring 13.84 HR was allowed to original plaintiff. In my view, therefore, in the backdrop of such factual scenario and the concurrent findings of fact recorded by courts below no substantial question of law arises in this appeal. The courts below have properly appreciated the evidence as well as the settled legal position. As such, I conclude that no substantial question of law arises in this appeal.

10. Accordingly, the Second Appeal is dismissed.

(G. A. SANAP, J.)