



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

APPEAL AGAINST ORDER NO. 29 OF 2019

1] Smt. Manikbai wd/o Yashwantrao Dhanwatay,
aged about 76 years,
R/o Dattadham, 57, Ramdaspath,
Nagpur – 440010.
**Deleted vide Court's order dated 12/2/2020
in CAA 50/2019.**

2] Vikram s/o Yashwantrao Dhanwatay,
aged about 48 years, Occ. Agriculturist/Business,
R/o Dattadham, 57, Ramdaspath, Nagpur – 440010.

...APPELLANTS

Versus

1] Arjun s/o Yashwantrao Dhanwatay,
aged about 54 years, Occ. Business,
R/o Jeevanchhaya Apartment,
Ramdaspath, Nagpur – 440010.

2] Smt. Kanchan wd/o Anil Sawant,
aged about 56 years, Occ. Housewife,
Residing C/o Mrs. Anuradha w/o Alok Choudhari,
Choudhari Bungalow, Bajaj Nagar, Nagpur.

3] Mrs. Anuradha w/o Alok Choudhari,
aged about 52 years, Occ. Housewife,
Residing at Choudhari Bungalow,
Bajaj Nagar, Nagpur.

...RESPONDENTS

Shri Rohit Joshi, Counsel for the appellant.

Shri G.G. Barapatre h/f Shri V.H. Kedar, Counsel for respondent
no.1.

None for respondent nos. 2 and 3.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 4, 2024

ORAL JUDGMENT :

The challenge is to the order dated 1/1/2019 passed below Exh.5 by the 8th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No. 316/2018, whereby the application, seeking temporary injunction, has been allowed.

2] Appellant no.1 was the original defendant no.1. She has expired and her name has been deleted. Appellant no.2 is the original defendant no.2, respondent no.1 is the original plaintiff and respondent nos. 2 and 3 are the original defendant nos. 3 and 4. The parties will be hereinafter referred to by their original nomenclature.

3] Having heard both sides, it appears that the suit property is an agricultural land bearing Khasra No. 95/1, admeasuring 6 acres, i.e., 2.43 HR, having Khate No. 177, City Survey No. 267, Sheet No. 72/70, situated at Mouza – Gorewada, Tahsil and District – Nagpur.

4] The learned Counsel for the appellant has invited my attention to the sale deed 24/1/2017. The suit property has

been purchased on 25/6/1964 by Smt. Manikbai, deceased – defendant no.1 from one Irene Florence.

5] This sale deed has been not challenged, though the plaintiff claimed that his father, Yashwantrao, had purchased the suit property in the name of Manikbai. This plea, in absence of challenge to the sale deed, is of no consequences. There is, thus, every reason to believe that Manikbai has acquired the suit property. She has, on 24/1/2017, executed a registered gift deed of the suit property in favour of defendant no.2. This gift deed has been challenged by way of present suit on the ground that Manikbai was not the real owner.

6] The learned Counsel for the plaintiff could not satisfy as to how the property, acquired by Manikbai under sale deed dated 25/6/1964, could be questioned by challenging the gift deed.

7] The registered sale deed of the suit property in favour of Manikbai will carry presumption of its contents, and in absence of challenge to the sale deed, Manikbai will have

absolute right to alienate the suit property in the manner she desires. She thought it proper to gift the property to defendant no.2. This transaction is, *prima facie*, in tune with the provisions of the Transfer of Property Act, 1882 (for short “the said Act”).

8] The learned Counsel for the plaintiff, however, made an attempt to invite my attention to the recitals in the gift deed to contend that the transaction is not genuine. The prime contention, however, is that Manikbai had no authority to gift the suit property.

9] I do not find any merit in the aforesaid submissions for the reasons stated in earlier paragraphs. Further, the plaintiff is not remediless and has protection in terms of Section 52 of the said Act. He may take appropriate steps in this regard.

10] For the reasons stated hereinabove, *prima facie* case is in favour of defendant no.2 and not in favour of the plaintiff. The trial Court has unnecessarily looked into other documents,

like family arrangement, etc., which has no bearing on the registered sale deed executed in favour of Manikbai and, thus, the trial Court arrived at an incorrect finding. The order impugned, therefore, is liable to be set aside. Hence, the following order :

ORDER

- i] The appeal is allowed.
- ii] The order dated 1/1/2019 passed below Exh.5 by the 8th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No. 316/2018, is hereby quashed and set aside.
- iii] Parties to bear their own costs.

JUDGE

Sumit