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

SECOND APPEAL NO. 305 OF 2018

APPELLANTS (Original Plaintiffs on R.A.) :

1. Sau. Kamubai Ashok Sabate, Aged about 40 years, Occ: Household, R/o Bori, Tah. Maregaon, Distt. Yeotmal
2. Sau. Sarla Shriram Zile, Aged about 52 years, occ: Household, R/o Talegaon, Tq. Warora, Dist. Chandrapur.
3. Sau. Nirmala Devrao Bhonde, Age about 50 years, Occ: Household, r/o Bhadrawati, Tq. Bhadrawati, Dist. Chandrapur.
4. Sau. Baby Dilip Shidam, Aged about 42 years, Occ: Household, r/o Baldi, Tq. Mul, Dist. Chandrapur

//VERSUS//

RESPONDENTS (Original) :

1. Devidas s/o Rambhau Nagose, Aged about 39 years, Occ: Agriculturist, R/o Waghnakh, Ta. Warora Distt. Chandrapur
2. Abhiman Natthu Gadge, Aged 47 years, Occ: Agriculturist, R/o Yewati, Tah. Warora, Dist. Chandrapur
3. Gahudas Rambhau Fulzele, Aged about 39 years, Occ: Agriculturist, R/o Jalka Tq. Warora, Dist. Chandrapur

4. Tryambak Rambhau fulzele,
Age 42 years, Occu. Household,
R/o Khandoba Ward, Jai Maharashtra
Chowk, Hinganghat, Tq. Hinganghat,
District Wardha

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Mr. C.S. Dhore, Advocate for the appellants.
Mr. R.D. Bhuibhar, Advocate for respondent No.1.

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CORAM : G. A. SANAP, J.
DATED : 24th JANUARY, 2024

ORAL JUDGMENT

1. Heard.

2. ADMIT. Taken up for final disposal forthwith by the consent of learned advocate for the respective parties.

3. In this second appeal, the challenge is to the judgment and order dated 15.01.2018 passed by the learned District Judge-1 Warora, District Chandrapur, whereby the learned Judge partly allowed the appeal and set aside the judgment and decreed dated 23.04.2010 passed by 2nd Joint Civil Judge (Junior Division),

Warora in Regular Civil Suit No.16/2001 in favour of the appellants with regard to the land bearing survey No.95.

4. At the stage of notice, the following substantial questions of law have been framed:

> "I) The trial Court having held the sale-deed dated 28.04.2000 executed by defendant No.1 in favour of defendant Nos.2 and 3 to be not binding on the plaintiffs, whether in absence of any appeal by the defendant Nos.2 and 3 challenging the decree of the trial Court, was the appellate Court justified in declaring that said sale-deed was binding on the plaintiffs?
>
> II) Whether the appellate Court was legally justified in refusing to grant relief to the plaintiffs with regard to the sale deed dated 14.03.2001?"

5. The facts in brief leading to the above questions need to be stated.

Appellant Nos.1 to 3 are the original plaintiffs and appellant No.4 is the original defendant No.4. Respondent No.1 is the brother of the appellants. The plaintiffs filed the suit seeking

partition and separate possession of the suit property, more particularly described in the plaint. According to the plaintiffs, the ancestral property, which was in the hands of their father, after his death, devolved upon them. They contended that the transfer of survey No.95 by defendant No.1, their brother, in favour of original defendant Nos.2, 3 and defendant 5, was illegal and as such, not binding on them. On these averments, they claimed partition of the suit property.

6. Defendant No.1, their brother, did not contest the suit. Defendant Nos.2 and 3 filed their separate written statements and contended that defendant No.1 was the absolute owner of field survey No.95 and by a registered sale deed dated 28.04.2000 for consideration of Rs.75,000/-, he sold 1.62 H.R. land to them. According to them, during the lifetime of the father of plaintiffs and defendant No.1, there was a partition between father and defendant No.1 and in the said partition, land survey No.95 was allotted to the share of defendant No.1. They contended that, as such, defendant No.1 became the absolute owner of the said property. On these contentions, they opposed the suit.

7. Defendant No.5 contended that defendant No.1 being the absolute owner of field bearing survey No.95, sold 1.70 H.R. land to him by registered sale deed on 14.03.2001, for a consideration of Rs.75,000/-. As far as defendant No.5 is concerned, he has reiterated the stand of defendant Nos. 2 and 3 *viz-a-viz* the rights, titles and interests of defendant No.1 is concerned.

8. Learned Judge of the Trial Court, on consideration of the evidence found the plaintiff Nos.1 to 3 and defendant No.4 entitled to get an equal share in the suit property with defendant No.1 and accordingly, decreed the suit. Defendant Nos. 2 and 3 did not challenge the judgment and decree. The judgment and decree passed in the Trial Court was challenged by the defendant No.5. The First Appellate Court, on consideration of the evidence on record, found that the finding of fact recorded by the trial Court with regard to the land bearing survey No.95, is concerned, was not based on proper appreciation of evidence and accordingly, that was set aside. Being aggrieved by this judgment and order, the appellants have come before this Court in appeal. At the stage of notice, the above substantial questions of law have been framed.

9. I have heard Mr. C.S. Dhore, learned Advocate for the appellants and Mr. R.D. Bhuibhar, learned Advocate for respondent No.1. Perused the record and proceedings.

10. Learned Advocate for the appellants submitted that the finding of fact recorded by the learned trial Judge with regard to survey No.95 was reversed without assigning any reason and without any evidence by the Appellate Court. Learned Advocate pointed out that the learned trial Judge did not believe the partition deed dated 20.11.1996, Exh. 86. It is pointed out that the trial Court recorded a finding that a partition deed cannot be taken into consideration *inasmuch* as the contents of the same were not proved. Learned advocate took me through the relevant observations made by the Appellate Court and submitted that on the wrong premise, the partition deed was made the basis of the reversal of the decree by the Appellate Court. Learned Advocate further pointed out that the right of the defendant No.1 as absolute owner of the property asserted on the basis of the partition deed was not established. Learned Advocate submitted that failure to appreciate the evidence in this manner has resulted in perversity. Learned Advocate further submitted that defendant Nos.2 and 3 have not challenged the judgment and decree passed by the trial

Court, but while considering the appeal filed by the defendant No.5 the judgment and decree in entity *viz-a-viz* survey No.95 was reversed by the Appellate Court.

11. Learned Advocate for the respondent No.1 submitted that the first Appellate Court has recorded cogent reasons while reversing the finding of fact recorded by the trial Court on this issue. Learned Advocate pointed out that the partition deed was a registered document. Learned Advocate further pointed out that defendant Nos.2 and 3 as well as defendant No.5 had contended in their respective written statements that on the basis of the partition deed survey No.95 was allotted the share of defendant No.1 and as such, he had become the absolute owner of the field. Learned Advocate pointed out that the Sub Registrar was examined to prove the document. It is further pointed out that there was no objection either for production of document or to give exhibit number to this document by the appellants. Learned Advocate took me through the relevant part of the judgment of the Appellate Court and pointed out that the learned Judge has recorded reasons for placing implicit reliance on the evidence and for setting aside the judgment and decree.

12. I am conscious of the fact that mere exhibiting a document does not amount to proof of the contents of the document. In a given case, the Court has to take into consideration the facts of the case and the nature of the document. Similarly, the Court has to consider the objection, if any, raised by the party for exhibiting the document as well as the consequences, keeping in mind the nature of the document and not objecting to the procedure of exhibiting the document. In this case, undisputedly, the plaintiffs are sisters of defendant No.1. The defendant Nos.2, 3 and 5, in their written statements, put forth a specific defence that the land bearing survey No.95 was allotted to defendant No.1 in the partition between him and his father. Defendant No.1 did not file a written statement and contest the claim. The defendant Nos.2, 3 and 5 have tried their level best to bring the appropriate evidence on record to justify their stand taken in the written statement. It is evident that they have done all that could have been done by a person of ordinary prudence placed in their position. They summoned the Sub Registrar. The partition deed was admittedly registered. The certified copy of the partition deed was produced on record and marked as Exh. 86. The plaintiffs did not object for exhibiting the document. It needs to be stated that if the plaintiffs had objected for exhibiting the

document and the document had not been exhibited by the trial Court then in that event, defendant Nos.2, 3 and 5 could have summoned defendant No.1 to depose about that partition deed because he was signatory to the said document. It is further pertinent to mention at this stage that defendant No.1 did not file the written statement and made any statement with regard to his absolute right in the property. It is, therefore, apparent that the learned Judge of the trial Court exhibited the certified copy of the partition deed on the premise that there was no objection from the plaintiffs and also the document was produced before the Court by the Sub Registrar, before whom the original partition deed was registered. It is evident that all these facts have been taken into consideration by the learned District Judge-1. Learned District Judge-1, in my view, has not committed any error or illegality while reversing the finding of fact. The evidence has been properly appreciated. As such, there is no perversity in the judgment. It is further pertinent to mention that the conduct of the plaintiffs is one of the factors that led the learned trial Judge to believe that they had no objection for giving an exhibit mark to the partition deed. It is pertinent to note that defendant Nos. 2, 3 and 5 categorically stated in their written statements that on the basis of the registered partition deed, the defendant No.1 became the

absolute owner of the property. In my view, in the backdrop of this situation, they were not only required to object for exhibiting the document but, they were also required under the law to amend the plaint and seek a declaration that the said partition deed was null and void and as such, not binding on them.

13. In my view, therefore, I do not see any substance in the appeal. Accordingly, the appeal deserves to be dismissed. In view of the above, the questions are answered.

14. Second Appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

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