



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

904 SECOND APPEAL NO. 417 OF 1994

Manik s/o Samruta,
Age 26 years, Occu: Agriculture,
R/o. Halda, Ta. Kandhar,
District Nanded.
(Now the appellant has became
Major, hence guardian is not shown)

...Appellant

VERSUS

1. Tanaji s/o Sambhaji Dhone(Died)
Through Lr's
- A. Sarjabai w/o Tanaji Dhone,
Age 45 years, Occu: Household,
R/o. Halda, Taluka Kandhar,
District Nanded
- B. Babu s/o. Tanaji Dhone,
Age 30 years, Occu: Household,
R/o. Warvat, Taluka Kandhar,
District : Nanded.
- C. Kesarbai d/o Tanaji Dhone,
Age 30 years, Occu : Household,
R/o. Warvat, Taluka Kandhar,
District : Nanded.
- D. Laxmibai w/o Sadanand Jadhav,
Aged 25 years, Occu : Household,
R/o. Piprawadi, Tq. Kandhar,
District Nanded
2. Samruta s/o Manikrao Shinde,
Age 57 years, Occu: Agril.,
R/o. Halda, Tq. Kandhar,
District Nanded.

...Respondents

...

Advocate for Appellant : Mr. M. D. Narwadkar
Advocate for Respondent Nos.1a to 1d : Mr. Kedar Warad h/f. Mr. S. V.
Warad

...

CORAM : ROHIT W. JOSHI, J.

DATE : 04th MARCH, 2025

ORAL JUDGMENT :-

1. The original defendants have preferred the present Second Appeal challenging decree for partition passed in favour of the plaintiffs in Regular Civil Suit No.153 of 1978 vide judgement and decree dated 29.01.1983 which has been confirmed by judgment and decree dated 30.06.1992 by the learned Fourth Additional District Judge, Nanded who has dismissed Regular Civil Appeal No.54 of 1983 preferred by the defendants, who are the appellants here.

2. The original plaintiffs are sons and daughter of one Sambhaji Dhone. This Sambhaji Dhone had executed a sale deed dated 04.03.1976 in favour of defendant No.1. Since the defendant No.1 was minor on the date of sale deed, the defendant No.2, his father, acted on his behalf in completing the sale transaction. The contentions of the plaintiffs in the suit was that the property alienated by Sambhaji Dhone, their father was an ancestral property which was sold without legal necessity and as such the sale transaction was not binding on them. The plaintiffs also raised a contention that simultaneously, with execution of the sale deed there was an agreement of reconveyance under which it was agreed that upon payment of Rs.5,000/- the

property alienated would be reconveyed by the purchaser/defendant No.1 to Sambhaji Dhone. The principal prayer in the suit is for reconveyance of the suit property and alternatively a prayer is made that in the event the decree for reconveyance is not granted, a decree for partition and separate possession be granted on the ground that the sale transaction being with respect to an ancestral property without legal necessity, will not be binding on the other coparceners. The learned Trial Court has decreed the suit partially by refusing the prayer for reconveyance for the suit property and instead granting a decree for partition and separate possession in favour of the plaintiffs.

3. After the suit was decided the defendant No.1 arrived at a compromise with the legal representatives of plaintiff No.1 and plaintiff No.3. However, the matter could not be settled *inter se* between plaintiff No.2 and the defendant No.1. In view of this development, the defendant No.1 preferred first appeal being Regular Civil Appeal No.54 of 1983. In this first appeal plaintiff No.2 was arrayed as respondent No.1 and the original defendant No.2, father of the defendant No.1 was arrayed as proforma respondent No.2. Vide judgment and decree dated 30.06.1992 the learned first appellate Court was pleased to dismiss the appeal confirming the findings recorded by the learned trial Court.

4. Being aggrieved by the aforesaid, the present Second Appeal has been filed. The Second Appeal came to be admitted on the following substantial questions of law :-

“(i) When three deeds for reconveyance is held to be not there then how the decree for partition be granted when the sale-deed becomes absolute raises substantial question of law.

(iii) That, the plaintiffs when loss their right, due to conveyance deed then the decree for partition cannot be granted.

(iv) That, the suit when is not for partition and separate possession of property seeking declaration alongwith that sale about same property is not binding or be declared as null and void, neither the relief a partition nor recovery of possession can be granted.

(v) That, the suit filed was for specific performance and recovery of possession on that basis, the relief of specific performance is refused, therefor, the recovery of possession is refused, therefore, the recovery of possession is not available, even by way of partition as the property does not remain joint family property.”

5. The questions are overlapping to a certain extent and therefore it will be appropriate to decide all of them together. It is a well settled principle that a Karta of a joint Hindu family has right to deal with joint Hindu family property including the authority to alienate the same. However, this authority is not absolute but it comes with a rider that the Karta can alienate joint Hindu family property only in cases of legal necessity, discharge of debt or for general interest of the family. In the present case it is not in dispute that the suit property was an ancestral property. It is also not in dispute that father of the plaintiffs late Sambhaji Dhone was Karta of the family. In such circumstances, Sambhaji Dhone could have alienated the property only in case of above mentioned contingencies. It also needs to be mentioned that in the event a sale by Karta is not for legal necessity or for similar needs, the sale will nonetheless be good to the extent of his share in the ancestral property.

6. It may also be mentioned that the legal position is well settled that in case an alienation by Karta is assailed by other co-perceners, it is necessary for them to allege that the alienation was not for legal necessity and once such allegation is made, it is for the purchaser to prove that the alienation was infact for a legal necessity.

7. In the present case, the plaintiffs have alleged that alienation of the suit property by their father Sambhaji was not for any legal necessity. The defendant/purchaser has failed to discharge the burden of proving legal necessity. The learned Courts have recorded proper findings in this regard. The learned Courts have therefore rightly held that the sale deed executed by Sambhaji Dhone was not binding on the plaintiffs and therefore the plaintiffs were entitled to a decree for partition and separate possession with respect to their share in the suit property.

8. The learned Advocate for the appellant/purchaser referred to the findings recorded by the learned Courts as also to the evidence on record, however, he was not able to point out any legal need or necessity for which the sale transaction had taken place. In my considered opinion the findings by the learned Courts that the sale transaction was not for any legal necessity or for discharge of debt or for general welfare of the family is just and proper and does not warrant any interference.

9. The learned Advocate for the appellant next contends that the prayer for partition and separate possession could not have been granted, since the plaintiff had not sought cancellation of the sale deed.

In my considered opinion, the submission lacks merit. It is well settled that while coparceners in a family challenge alienation of ancestral property by a Karta they can do so by seeking a decree for partition and separate possession. The legal position in this regard is settled by a catena of judgments by the Hon'ble Supreme Court and almost all the learned High Courts. The learned Advocate for the respondent is right in placing reliance upon judgment dated 21.12.2023 passed by this Court in Second Appeal No.588 of 2005, wherein it is held that a coparcener is entitled for partition and separate possession of his share in ancestral property and for that there is no need to seek declaration to the effect that the sale deed by Karta is not binding on him to the extent of his share.

10. In that view of the matter the contention raised by the learned Advocate for the appellant deserves rejection and is rejected accordingly.

11. The next contention by the learned Advocate for the appellant is that a prayer for reconveyance of the property was also made by the plaintiff and since reconveyance is not granted, it implies that the sale has become absolute. He therefore contends that decree for partition could not have been passed by the learned trial Court. I am afraid that

the contention is misconceived. The sale is not binding on the coparceners since it is not for the legal necessity. The said argument may hold good *qua* Sambhaji Dhone who had sold the property, however, the said argument will not hold good as against the coparceners who have not joined him in the sale transaction. In that view of the matter, substantial questions of law framed by this Court are answered against the appellant. The decree for partition passed by the learned trial Court is just, proper and legal. The learned First Appellate Court was also justified in dismissing the appeal.

12. Although, a question of law in regard to the shares was not framed while the appeal was admitted, the learned Advocate for the appellant sought leave to contend that shares of parties were not properly drawn by the learned trial Court and the learned first appellate Court also lost site of this aspect of the matter that the shares are not correctly drawn. In fairness and to his credit, the learned Advocate for the respondent did not object to immediate hearing on these questions of law. Therefore, with the consent of the learned Advocate for the respondent additional question was framed before commencement of hearing of the appeal on merits and the parties are heard finally on the said question immediately with the consent of the learned Advocate for the respondent. The substantial questions of law

which is framed today is as under:-

“(i) Was the sale deed executed by Sambhaji Dhone valid to the extent of his share in the coparcenary property i.e. suit property ?

(ii) Have the learned Courts computed the shares of the parties correctly ?

13. It is undisputed position on record as it emerges from the plaint itself that Sambhaji Dhone had two sons, Mansing and Tanaji i.e. plaintiff Nos.1 and 2. There were thus three coparceners in the family. A sale deed executed by Karta, although without legal need or necessity, is good and valid to the extent of his share. The sale deed executed by Sambhaji Dhone was therefore valid to the extent of his $\frac{1}{3}^{\text{rd}}$ share. Sambhaji, Mansing and Tanaji, the three coparceners had $\frac{1}{3}^{\text{rd}}$ shares each in the suit property. Therefore, Tanaji, plaintiff No.2 is entitled to $\frac{1}{3}^{\text{rd}}$ share in the suit property as against $\frac{4}{9}^{\text{th}}$ share awarded by the learned trial Court and the learned first appellate Court. To that extent the decree needs modification.

14. In the result, the appeal is partly allowed.

15. The decree passed by the learned Civil Judge, Junior Division,

Kandhar in Regular Civil Suit No.153 of 1978 stands modified to the extent that the plaintiff No.2-Tanaji Sambhaji Dhone is entitled to 1/3rd share in the suit property. Clause (2) in the operative order and decree dated 29.01.1983 in the said Civil Suit stands modified accordingly.

[ROHIT W. JOSHI J.]

Narwade/