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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 381 OF 2017
WITH
CIVIL APPLICATION NO. 1961 OF 2016
WITH
INTERIM APPLICATION NO. 10573 OF 2024
WITH
CIVIL APPLICATION NO. 1275 OF 2019

Mrs. Prasanna Vijay Salvi and Anr ... Appellants/Applicants

VS.

Shri Shekhar Gangram Panvalkar and ... Respondents
Ors

Ms. Sunita Khamkar for Appellants.

Mr. Sanjiv A. Sawant, Ms. Samiksha S. Mane for Respondent
Nos. 1 and 2.

CORAM : GAURI GODSE, J.

DATED : 27th JUNE 2025

ORDER:

1. This second appeal is listed before me in view of the administrative order dated 12th June 2025.

2. Heard learned counsel for the appellants at substantial length. This appeal is preferred by defendants nos. 2 and 3 to challenge the judgment and decree passed by the first appellate court. Respondents Nos. 1 and 2 are the heirs and legal

representatives of the deceased plaintiff. Respondent No. 3 is original defendant no. 1. The first appellate court has declared that the plaintiff has a 1/3rd share in the suit property, and the sale deed executed in favour of defendant nos. 2 and 3 is not binding on the plaintiff's 1/3rd share. Hence, this second appeal by original defendant nos. 2 and 3, who claim to be purchasers of the suit property from defendant no.1 and Mohan, who was the deceased brother of defendant no.1. The plaintiff is the sister of defendant no.1 and the deceased brother, Mohan.

3. The suit property admittedly was originally owned by one Sakharam. Defendant no.1, the plaintiff and deceased Mohan, are children of the deceased Sakharam. The plaintiff filed suit for a declaration and partition of a 1/3rd share on the ground that she, being the daughter of Sakharam, is entitled to a 1/3rd share along with her two brothers, i.e. defendant no.1 and the deceased Mohan.

4. Learned trial court held that the plaintiff proved her 1/3rd share in the suit property and further also held that the plaintiff proved that defendant no.1, along with deceased brother Mohan, sold the property, including the plaintiff's share, to defendant nos. 2 and 3. The issue regarding the declaration of the plaintiff's ownership of her share in the suit land was also held in the

affirmative by the trial court. However, the trial court dismissed the suit by holding that defendant nos. 2 and 3 were bonafide purchasers of the suit property and therefore it was not proper to disturb the sale deed of the defendants.

5. A perusal of the issues framed by the trial court does not show any issue framed on whether defendant nos. 2 and 3 were bonafide purchasers of the suit property or that the defendant nos. 1 and 2 were entitled to alienate the plaintiff's 1/3rd share in respect of the suit property. In view of these findings, the plaintiff filed a first appeal. The first appellate court confirmed the trial court's findings of the plaintiff's 1/3rd undivided share in the suit property and that defendant no.1, along with the deceased brother Mohan, had sold the plaintiff's share to defendant nos. 2 and 3. Thus, by confirming the plaintiff's 1/3rd share in the suit property, the first appellate court set aside the trial court's decree and granted a declaration in favour of the plaintiff by declaring that the plaintiff is entitled to a 1/3rd share in the suit property. Thus, the sale deed executed in favour of defendant nos. 2 and 3 is held to be ineffective, so far as the plaintiff's 1/3 share is concerned, and therefore, it is held that it would not bind the plaintiff's suit. The first appellate court decreed the suit, granting the plaintiff's 1/3rd share in the suit property.

6. Learned counsel for the appellants submits that defendant nos. 1 and 2 are purchasers of the suit property for value without notice. She submits that there is no dispute that the entire consideration towards the sale deed in their favour is paid by the appellants. She further submits that the plaintiff failed to enter the witness box to support her contentions; instead, she examined her constituted attorney, who had no personal knowledge about the plaintiff's claim. She therefore submits that the evidence led on behalf of the plaintiff through Power of Attorney Holder could not have been accepted by the appeal court to grant partition and separate possession in respect of the suit property. She thus submits that considering the revenue records that entered the names of defendant no. 1 and deceased brother, Mohan after the death of the original owner, defendant nos. 2 and 3 rightly purchased the suit property from defendant no. 1 and his deceased brother Mohan. Thus, considering that defendant nos. 2 and 3 paid the entire consideration amount to the vendors, the plaintiff would not be entitled to seek any declaration in respect of the suit property.

7. To support her submissions, learned counsel for the appellants relies upon the last proviso of Section 3 of the Transfer of Property Act, 1882. She submits that defendants nos. 2 and 3 are bonafide purchasers of the suit property for value without

notice. She submits that the last proviso to Section 3 states that if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was aware of the fraud. She thus, submits that the second appeal would raise substantial question of law on whether the plaintiff is entitled to decree as prayed against deceased nos. 2 and 3 who are bonafide purchaser of the suit property and whether in view of the last proviso of Section 3 of the said Act, the sale deed executed in favour of defendant nos. 2 and 3 could be declared as not binding on plaintiff's share. She further submits that the suit filed only for one property amongst other properties of the joint family would not be maintainable. However, neither of the courts considered the said aspect. She further submits that the issue regarding whether the evidence led by a constituted attorney could be accepted would also raise a substantial question of law in the second appeal.

8. Learned counsel for respondents nos.1 and 2 (respondents) supports the impugned judgment and decree. He submits that the last proviso to Section 3 of the said Act is in no manner applicable to the facts of the present case. He submits that there is no pleading and evidence with regard to the fraud and concealment of the facts. Learned counsel for the plaintiff submits that nothing is pleaded and proved to show that, after due

diligence, the sale deed was executed by defendant nos. 2 and 3. On the point argued on the partition and separate possession prayed for only one property, learned counsel for the respondents submits that this was not a question raised before the trial court. He submits that the issue regarding the plaintiff's 1/3rd undivided share in the suit property was also held by the trial court in favour of the plaintiff. He submits that the issue regarding other joint family properties cannot be addressed in this appeal, as defendant No. 1 has not filed a written statement or raised any dispute concerning joint family property. He therefore submits that the appellants-defendant nos. 2 and 3, who are strangers to the joint family, would have no personal knowledge with regard to the joint family property.

9. With reference to the arguments that the plaintiff led evidence through the constituted attorney, learned counsel for the plaintiff points out that defendant nos. 2 and 3 failed to lead evidence in support of their objections and controvert the evidence led by the plaintiff. He submits that the fact that the plaintiff is the daughter of the original owner, i.e. deceased Sakharam, is not in dispute. He submits that the evidence led by the constituted attorney was not restricted to the personal knowledge of the plaintiff. He submits that when there is no dispute that the suit property is a joint family property, and the

plaintiff was not a party to the sale deed, the issue with regard to the evidence led by the plaintiff through the constituted attorney is rightly accepted by both the courts in favour of the plaintiff. He thus submits that none of the grounds on behalf of the appellants raises any question of law.

10. I have perused the papers of the second appeal. I have carefully perused the pleading on behalf of the appellants, i.e. defendant nos. 2 and 3. Defendants Nos. 2 and 3 claimed to have executed the sale deed based on the revenue entries by contending that after the death of Sakharam, the names of his two sons were entered in the revenue record. Hence, based on the revenue record, defendants nos. 2 and 3 purchased the suit property from defendant no.1 and his deceased brother Mohan. The written statement is bereft of any pleadings regarding due diligence, except for referring to the revenue record. The defendant No. 1, who is the son of the deceased Sakharam, executed the sale deed. He did not file a written statement to deny the plaintiff's claim. It is not the case of defendant nos. 2 and 3 that defendant no. 1 and deceased Mohan executed the sale deed on behalf of the joint family, and also on behalf of the plaintiff. The sale deed, therefore, executed only by defendant no. 1 and deceased brother Mohan, would not bind the plaintiff's share, who has a 1/3rd share through the deceased Sakharam.

Both the courts have concurrently held that the plaintiff is the daughter of deceased Sakharam and thus, entitled to claim her 1/3rd share in respect of the suit property.

11. The issue regarding defendant nos. 2 and 3 being bonafide purchasers without notice is concerned; in the absence of any specific pleadings in the written statement, the ground of defendant nos. 2 and 3 being bonafide purchasers without notice cannot be dealt with for the first time in the second appeal. Though the trial court observed that defendants nos. 2 and 3 are the bonafide purchasers, the said findings are not supported by the pleading and supporting evidence. The appeal court has therefore rightly reversed the trial court's findings.

12. Concurrent findings recorded by both the courts regarding the plaintiff's entitlement to 1/3rd share are based on a correct appreciation of the pleadings and evidence on record. The ground argued on relying on the last proviso of Section 3 of the said Act is irrelevant, so far as the facts of the present case are concerned. The findings of fact recorded by both courts would not require any consideration by this court. There is no dispute that Sakharam originally owned the suit property, and the plaintiff, being the daughter of Sakharam, would be entitled to 1/3rd share. Even otherwise, defendants nos. 2 and 3 failed to lead any evidence to

counter the evidence led by the plaintiff.

13. I do not find any illegality or perversity in the concurrent findings recorded by both the courts on the plaintiff's entitlement of 1/3rd share in the suit property through her deceased father Sakharam. The findings recorded by the first appellate court to grant the plaintiff's 1/3rd share by declaring that the sale deed would not bind her share are based on a correct appreciation of the evidence on record.

14. None of the grounds argued on behalf of the appellants raises any question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, the pending applications are disposed of as infructuous.

(GAURI GODSE, J.)