
(2001) 09 BOM CK 0037
In the Bombay High Court
Case No : Second Appeal No. 304 of 1985

Gunwant Mahadeorao Deshmukh	Vs	APPELLANT
Bapurao Shinde and Others		RESPONDENT

Date of Decision : 08-09-2001

Acts Referred:

Evidence Act, 1872 — Section 101

Citation : (2002) 1 ALLMR 253 : (2002) 3 BomCR 286

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : A.M. Bapat, for the Appellant; A.V. Bhide, for respondent No. 5, Ramesh Darda, for respondents 6 to 11 and A.K. Choube, for 1-A, 3 and 5, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—Heard learned Advocate for the appellant and respondents.

2. This second appeal is filed by the original plaintiff. The substantial question of law that was formulated by this Court at the time of admission of the appeal is as follows:- "Whether the finding of fact, that there was no legal necessity for the alienation can be accepted in second appeal, when the judgment of the first Appellate Court shows that it has been a wrong view of the burden of proof."

3. The following facts have given rise to the litigation in which the parties have come to the Court in this second appeal. The plaintiff filed regular civil suit for possession and also mesne profits. The suit was filed in respect of field Survey No. 13/1 admeasuring 6 acres 31 gunthas of village Gawandi. This field was originally owned by one Mahadeorao who died in the year 1923 without any issue. Indirabai was widow of the said Mahadeorao, she became sole successor and owner of the estate. Mahadeorao left behind him about 600 acres of land, besides other property, which included above property. At the time of death of Mahadeorao, Indirabai was a child widow and her paternal grand-father Gulabrao

was appointed as Guardian by the District Judge, Amravati. The said Gulabrao died in 1930. Indirabai had one sister by name Anusuyabai who was the real mother of the plaintiff-Gunwant. Plaintiff's natural father Gulabrao gave the plaintiff to Indirabai in adoption which took place on 16-2-1956, about which there is no dispute between the parties.

4. The suit field was sold by Indirabai to one Jethmal Budhmal on 3-1-1935. After the death of Jethmal there was partition between his sons and the suit field came to the share of Champalal-original defendant No. 2. Champalal donated the field to defendant No. 3-Madhya Pradesh Bhudan Yagna Board in 1954 who in turn gave it to the defendant No. 1/alongwith possession.

5. Gunwant-plaintiff filed regular civil suit for possession and mesne profits in 1968 on the ground that the sale deed dated 3-1-1935 was not binding upon him and that there was no legal necessity for Indirabai to sell the field. The suit of the plaintiff came to be dismissed by the trial Court by well reasoned judgment. The plaintiff therefore, preferred appeal to the Extra Asst. Judge, Yavatmal bearing Civil Appeal No. 72/1981, but the appeal was also dismissed. Hence this second appeal.

6. Mr. Bapat appearing for the appellant/original plaintiff contended that even though the plaintiff was taken in adoption in 1956 the adoption dates back to the year when husband of Indirabai died i.e. when Mahadeorao died in 1923 and therefore, the adopted son has right to challenge the alienation made by the widow right from his entry in the family in 1923 till 12 years, after his adoption. Mr. Bapat also contended that, in view of the right given to the adopted son and in view of the fact that Indirabai was a limited owner having no right to dispose of the property, the challenge to the said transaction of 1935 was just and proper. Mr. Bapat also urged that the burden of proof, proving the legal necessity for Indirabai in 1935 when field was sold, was on the purchasers and the burden could not be placed upon the plaintiff and since the purchasers have failed to discharge his burden, the suit of the plaintiff was liable to be decreed.

7. On the other hand Counsel for the respondent contended that even if it is accepted for the sake of arguments that adoption dates back to the date of death of husband of Indirabai the suit was filed with mala fide intention, because the adoption took place on 16-2-1956 and the suit was filed in 1968, just before completion of 12 years. He also urged and contended that when the sale deed dated 3-1-1935 which was sought to be challenged by the plaintiff itself indicated and gave a cause and reason for Indirabai to sell the field, it was not sufficient to hold that there was legal necessity because in the course of time the sale deed having been taken place in 1935 and challenge being taken in 1968, after 33 years, for the defendant to prove the legal necessity. Thirdly, it was contended that when suit was filed, Indirabai was alive, she was not joined and kept behind, by the plaintiff with a mala fide intention. It was also contended by him that after purchasing the field in 1935 by one Jethmal, there was a partition between the sons of Jethmal and the property came to the share of Champalal who gave the

property to Bhudan Yagna Mandal who in turn gave it to defendant No. 3 and therefore now in view of these circumstances, if the sale deed of 35 was to be declared null and void, all the subsequent purchasers would be affected and causing grave injustice and loss to them. The Counsel for the respondent also pointed out that provisions of the Madhya Pradesh Bhudan Yagna Board came in the way of the plaintiff and therefore, both the courts rightly dismissed the suit and appeal of the plaintiff.

8. As regards the contention raised by Mr. Bapat regarding adopted son, there is no dispute about the adoption after the death of husband of Indirabai in 1923. There is also no dispute that Indirabai as widow had limited interest and there is also no dispute that the adopted son can challenge the alienation made by widow. However, crucial question is whether in the circumstances of the case, this Court should interfere and set aside both the judgment of the trial Court as well as of the Appellate Court and decree the suit of the plaintiff and my answer to the said question is in the negative.

9. It is true that in ordinary case and circumstances, it is for the purchase to prove the legal necessity. However, in the instant case, the adopted son waited for almost 12 years, to file the suit and he chose to challenge the sale deed of 1935 in 1968, i.e. after a gap of 33 years, when almost all the witnesses were likely to have died or not traceable to call upon the defendant to prove the legal necessity by examining them. Particularly when Indirabai was alive at the time of filing of the suit, but she was not joined in the suit, no declaration was claimed and the plaintiff was trying to take advantage of the lapse of time by keeping Indirabai behind the back. Not only Indirabai was not joined, but no affidavit of hers explaining the non-existence of legal necessity was filed nor was she examined by the plaintiff in his support. Therefore, in these circumstances, the reliance placed by the Court on the recitals in the sale deed for the purpose of finding out that there was legal necessity was only course available and was the proper course adopted. In fact for proving the sale deed and proving the power of attorney which Baswantrao had, a person from the office of the Sub-Registrar was required to be called, but he produced the copy of the power of attorney given by Indirabai to Baswantrao which was marked as Exhibit 29, he also learnt that witnesses to the power of attorney were not alive. Even Indirabai was served with the summons, but she also did not turn up. Obviously it is because of the collusion between Indirabai and plaintiff or because plaintiff did not want Indirabai to face cross-examination. This suit is therefore nothing but an attempt to gain unfair advantage over the purchasers who bona fide relying upon the representation made for the sale deed have acted as owner of the property, then partitioned the property, then donated the land to Bhudan Mandal and whereas the Bhudan Mandal in its legal authority has given it to defendant No. 3. In fact it is a case where both the courts below have considered all the submissions which are now made by Shri Bapat on behalf of plaintiff and they have rejected those submissions, either on law or on facts and denied the benefit from the decree from the Court.

10. Mr. Bapat in support of his contentions relied upon the judgment of the Supreme Court reported in Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, , which was followed in Krishtappa Vs. Ananta Kalappa Jaratakhane and another, and also upon the judgment of the Supreme Court reported in Ramaji Batanji Vs. Manohar Chintaman and Others, and other number of judgments cited by Mr. Bapat. The Counsel for the respondent also relied upon judgment reported in Hazara v. Dina, AIR 1933 Lah 796 and Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others, . The Counsel for the respondent also relied upon the Bhudan Yagya Act to contend that once the land given to Bhudan Mandal, and is allotted by the S.D.O. to a person, the said transfer becomes complete and cannot be challenged.

11. Mr. Bapat as stated above relied upon Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, , wherein the doctrine of relation back is discussed and the powers of the widow to dispose of the property. However, this judgment is of no use to the appellant, because the Supreme Court did not agree with the view expressed in Anant Bhikkappa Patil (minor) by next friend AIR 1943 196 (Privy Council) and it was required to be held that in deciding that an adopted son is entitled to divest the estate of a collateral, which had devolved by inheritance prior to his adoption AIR 1943 196 (Privy Council) , went far beyond what had been previously understood to be the law. It is not in consonance with the principle well-established in Indian jurisprudence that an inheritance could not be in abeyance, and that the relation back on the right of an adopted son is only "quoad" the estate of the adoptive father. Moreover, the law as laid down therein leads to results which are highly inconvenient. What the Supreme Court has clarified is that transferees from limited owners, whether they be widows or coparceners in a joint family, are amply protected. The Supreme Court further held that the claim of the appellant to divest a vested estate rests on a legal fiction, and legal fiction should not be extended so as to lead to unjust results. Therefore, this decision supports respondent and not the appellant because in the instant case the alienation were challenged even when the widow was alive and the alienation had taken place in the year 1935 and were challenged in 1968.

12. Mr. Bapat also relied upon the judgment of the Karnataka High Court reported in Krishtappa Vs. Ananta Kalappa Jaratakhane and another, . However, the facts are totally different and the Karnataka High Court relied upon the judgment of the Supreme Court in Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, referred to above which is already discussed.

13. Mr. Bapat also relied upon the judgment of the Bombay Court reported in Ramaji Batanji Vs. Manohar Chintaman and Others, , wherein, any suit where an absolute sale had been made by a Hindu widow, the burden would be on the alienee or the transferee from the alienee or the person who relies on the validity of the alienation, whether he is plaintiff or defendant, to show that the absolute alienation of the property was justified under Hindu Law in cases in which the Hindu widow had only a limited estate. There is no dispute about this preposition

laid down that the burden of proving his legal necessities is on the purchaser. However, I have already considered that in the circumstances the purchasers had discharged their burden by relying upon the recitals in the sale deed. It appears from the said judgment that the issues involved in the said judgment were totally different. Even otherwise, since the Supreme Court judgment of 1954 clearly speaks about the rights of the widow and the protection granted to the alienee, I am inclined to go by the view expressed in the said judgment. As against this Counsel for the respondent relied upon the judgment of Lahore High Court reported in AIR 1933 Lah 796 wherein it was held that after the lapse of a period of years a vendee cannot be expected to give strict proof of necessity. Secondly the reliance was placed by the Counsel for the respondent on the judgment of the Supreme Court reported in Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others, , the Supreme Court held that legal necessity does not mean actual compulsion, it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. The recitals in the sale deed of legal necessity did not by themselves prove legal necessity, however, they are admissible in evidence. Both the views expressed by the Supreme Court aptly applies to the facts of this case. Therefore, the contentions raised by Mr. Bapat are required to be rejected.

14. Counsel for the respondent relied upon section 19 of the Madhya Pradesh Bhudan Yagna Act, 1953 which provides that every gift of land in respect of which an order has been passed u/s 17 shall, after the date of order, be irrevocable. Section 17 of the Act provides the procedure for making donation of the land and the powers are given to the Revenue Officer to make summary inquiry and decide objections raised to the gift and thereafter he has to pass an order accepting the gift on behalf of the Board. In the instant case, there is an order of the Revenue Officer accepting the gift and the gift is therefore, irrevocable u/s 19. Section 18 provides that the said order shall not be subject to appeal or revision but any party aggrieved by the order or any other person interested in the land, may file a civil suit within six months. But provisions of this section have not been resorted to by the appellant and since by virtue of sections 17 and 19 the procedure is followed and the gift has become irrevocable and consequently the Bhudan Board has given the land to the respondent and now the appellant cannot be permitted to agitate the same.

15. For the reasons stated above, the appeal fails and same is dismissed with costs throughout.