

(2014) 02 BOM CK 0042
In the Bombay High Court
Case No : Second Appeal No. 86 of 1999

Kawadu

APPELLANT

Vs

Jainabai and Namdeo

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : (2014) 5 MhLj 240

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Sawan Alaspurkar, holding for Mr. Anand Parchure, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—The present appeal is directed, against judgment and order dated 2.11.1998, passed by the learned Additional District Judge, Chandrapur, in Regular Civil Appeal No. 49 of 1986, which was partly allowed, which arose from judgment and order dated 4.2.1986, passed by the learned Joint Civil Judge Junior Division, Brahmapuri, in Regular Civil Suit No. 187 of 1977, whereby the suit was decreed. Though served on merits, the respondents did not turn up for hearing.

2. The appeal was admitted, on 12.3.2001, on the substantial questions of law as to whether the First Appellate Court was justified to grant relief of joint possession to the plaintiffs as joint co-owners and whether any interference is required at the instance of this Court.

3. The facts of the case, in brief, are thus:

That Kawadu son of Rushi Kowe purchased the suit land Bearing Khasara No. 52 admeasuring 2.57 HR, assessed at Rs. 7.76, situated at Mouza Viticheck, P.C. No. 36 in Tahsil Brahmapuri.

4. It is the case of appellants (original plaintiffs) that by registered Sale Deed

dated 28.12.1970 one Chinkaki wd/o Govinda Kumare sold the suit land for sum of Rs. 3,000/- and placed the plaintiffs in possession of the suit land. The land was described as Khasara No. 52, admeasuring 2.57, assessed at Rs. 0.58, situated at Mouza Viticheck, P.C. No. 36, in Tahsil Brahmapuri, District Chandrapur which was bounded to the East by the field of Kawadu Mahar, to the West by the field of Anjanabai Kahate, to the North by the field of Kisan Pusam and to the South by the field of Madhao Kumare. It was the specific case of the plaintiffs that the suit land was earlier in the joint ownership of Madhao S/o. Baburao Kumare, Govinda S/o. Baburao Kumare and Kisan Pusam. Pursuant to partition in the family, share of Govinda was in possession of his widow Chinkaki and Chinkaki had sold the suit land in favour of Kawadu Rushi Kowe under a registered Sale Deed and Kawadu was placed in possession thereof. It is thus contended that there was no question of any partition to be considered after execution of registered Sale Deed because nobody had challenged the registered Sale Deed nor any appeal was filed by any person claiming share contrary to the averments made in the registered Sale Deed.

It is under these circumstances, the decree for declaration and possession was prayed before the trial Court. The learned trial Judge after hearing the parties going through the evidence adduced by the witnesses and perusing documentary evidence had observed, in connection with contrary stand of the absence of partition raised by the defendants, at paragraph No. 16 thus:

Therefore the fact of partition and separate possession and cultivation of land of their share, I have also no hesitation in coming to the conclusion that the land bearing Khasara No. 52 area 7.72 acres situated at mouza Vetichak of tahsil Brahmapuri of district Chandrapur was partitioned amongst the three brothers namely Madhao (Deft. No. 1) Govinda and Kisan and in the said partition northern land was given to Kisan central one was given to Govinda and southern one was given to the Deft. No. 1 Madhao, and after the partition each of the share holder was put in the possession and cultivation of the land of their share. Accordingly, the deceased defendant No. 4 Chinki sold her land admeasuring 2.57 acres to the plaintiffs for the consideration of Rs. 3000/- and in the consideration of the suit land on the same day i.e. 28.12.1970. The defendant Nos. 1 and 2 themselves failed to show that at the time of execution of the suit sale-deed deceased Chinki Kumare and plaintiffs were not competent to enter into a contract and that they were not qualified to enter into a same. The defendant No. 1 and 2 also failed to show that there was no sale transaction at all and the same was not intended to be acted upon.

In view of above observation based upon the evidence, it is contended on behalf of the appellants, that there was no justification on the part of the learned First Appellate Judge to come to a wrong conclusion that no decree for specific share in Khasara No. 52 can be passed. Particularly when the suit land was purchased from a Hindu woman who was in possession of the suit land pursuant to the partition in the family and she was successor of Govinda who had died long back,

Chinkaki was a sole owner of the property as Hindu woman who was in her own right possessing the suit land as absolute owner thereof and she was in a position to transfer the land in favour of Kawadu under the registered Sale Deed. The provisions of Section 14 of the Hindu Succession Act, 1956 appears to have been ignored by the learned First Appellate Judge by assuming something which was not established on record. There was no reason for the learned First Appellate Judge to hold that the partition was not duly established and no such case was made out to challenge the registered Sale Deed in question nor any appeal was filed for questioning the registered Sale Deed executed by Chinkaki in favour of Kawadu. That being so, the First Appellate Court was not justified to partly allow the appeal by making interference in the impugned judgment and order passed by the trial Court which was well reasoned and in accordance with the legal position stated above. Hence, substantial questions of law must be answered in favour of the appellants. In view of above, the second appeal needs to be allowed.

In the result, the Second Appeal is, therefore, allowed. The judgment and order, dated 4.2.1986, passed by the learned Joint Civil Judge Junior Division, Brahmapuri, in Regular Civil Suit No. 187 of 1977, is restored. The impugned judgment and order dated 2.11.1998, passed by the learned Additional District Judge, Chandrapur, in Regular Civil Appeal No. 49 of 1986, is hereby quashed and set aside.

The Second Appeal is allowed accordingly.