

(2013) 02 BOM CK 0058

In the Bombay High Court

Case No : S.A. No. 327 of 2011 with Civil Application No. 845 of 2011

Narayan Ramu Karale

APPELLANT

Vs

Shantabai Anna Patel (since deceased) through LRs. Prakash
Anna Patil and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 3 ALLMR 197 : (2013) 6 BomCR 176 : (2013) 2 MhLj 651

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

Bench : Single Bench

Advocate : B.K. Raje, for the Appellant; Pankaj Deokar holding for Rahul S. Kate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard the submissions of both the sides. This second Appeal is preferred against the Judgment and Order dated 3rd March, 2011 passed by the District Judge-1 Sangli in Regular Civil Appeal No. 387 of 1999 as also the Judgment and Order dated 30th March, 1992 passed by the Civil Judge, Junior Division, Tasgaon at Tasgaon in Regular Civil Suit No. 321 of 1977; whereby the Regular Suit filed by Anna Mahadgonda Patil (Original Plaintiff) against the legal heirs of Ramu Krishna Karale was decreed and legal heirs of said Ramu Krishna Karale were directed to deliver the vacant and peaceful possession of the suit house property to the Plaintiff.

2. It appears that one Krishna Bhosale died in the year 1940, leaving behind Rajjubai, his widow and two daughters Akkubai and Tanubai. It is to be noted that Tanubai died on 3-8-1977. Smt. Rajjubai, the widow of Krishna had executed the registered gift deed in the year 1946 in favour of her daughter Akkubai, excluding her other daughter Tanubai from claiming the house property. Akkubai then sold the house property by a registered sale deed dated 30th July, 1976 (Exhibit 76). The sale deed was executed in favour of the Plaintiff Anna (the original Plaintiff). The trial Court while deciding the Regular Civil Suit No.

321/1977 has considered the facts pleaded including the registered documents, gift deed as well as the sale deed, both the registered transfer documents on the basis of which the Plaintiff has claimed ownership title to the suit house property. In the result, the trial Court held that the Plaintiff had acquired ownership title to the suit house property and he has been dispossessed by the Defendants in the month of October, 1976. The contention of the Defendants in the suit that the sale deed dated 30th July, 1976 was bogus, fraudulent, illegal and without consideration was specifically negated on the ground that the Defendants could not prove that the sale deed was executed in favour of the Plaintiff by means of a fraud played on Akkubai. It is also pertinent to note that the Defendant did not enter into witness box to substantiate the contentions in respect of the alleged fraud or illegality though pleaded. Under these circumstances evidence as to the ownership and title of the Plaintiff over the suit house property was held established before the trial Court and the suit was decreed. The Defendant being aggrieved by the said decree passed by the trial Court had challenged the same in Appeal being Regular Civil Appeal No. 387 of 1999 before the Court of District Judge-1, Sangli. The First Appeal was dismissed by Judgment and Order dated 3rd March, 2011. The Appellate Court concurred with the findings recorded by the trial Court that the Plaintiff had proved his title to the suit property and accordingly rejected the Appeal including the prayer of remanding the case to the trial Court, as canvassed by the Appellant herein to lead evidence on the basis of the alleged will deed. The said prayer was sought to be pressed into service again at the stage of the Second Appeal. Be that as it may, apart from the bare pleadings in the written statement alleging that the sale deed executed by Akkubai was bogus and without consideration and that it was executed by practicing fraud upon Akkubai. No evidence was led by the Defendants to prove their contentions pleaded in the written statement. In the result, the First Appeal was dismissed.

3. Faced with the concurrent findings recorded by the Courts below, the unsuccessful Defendant (Appellant herein) preferred this Second Appeal, seeking to agitate questions of Hindu Law on the pretext that the power of a Hindu widow to alienate property belonging to her husband is limited and that the widow could not have made effective gift in favour of her daughter. The learned counsel on behalf of the Appellant sought to place reliance upon the rulings in the case of Kamala Devi Vs. Bachu Lal Gupta, . The contentions canvassed by the learned counsel that Smt. Rajubai had no absolute power to dispose of the suit house property in favour of her daughter Akkubai in the year 1946, could not have been considered by the courts below in the absence of any specific challenge to the alienation made by Rajubai by the registered gift deed in the year 1946 made in favour of Akkubai. There was no Counter Claim in the suit by or on behalf of the Defendants. In fact the suit was sought to be defended on the ground that the sale deed executed by Akkubai in favour of the Plaintiff was bogus, without consideration and was executed by practicing a fraud. This defence agitated by the Defendant in the trial Court was not established. In other

words, it was not the case of the Defendant that Akkubai was not owner of the suit property so as to dispose of the said suit house property by a registered sale deed. Under these circumstances, the principle of Hindu Law canvassed by the learned counsel on behalf of the Appellant with reference to the ruling in the case of Smt. Kamala Devi's case (supra) is not attracted in the facts and circumstances which were pleaded before the courts below. Therefore, no substantial question of law as to the applicability of the principle of Hindu Law can arise in the present case. At this stage of the Second Appeal when concurrent findings of facts have been recorded in favour of the title of the Plaintiff as owner of the suit property on the basis of the registered sale deed dated 30th July, 1976. In my opinion, no legal ground is made out to disturb the concurrent findings recorded by the Courts below. No any substantial question of law can arise particularly when findings were conclusive and concurrent.

4. As observed above, this Second Appeal did not spell out any substantial questions of law. This Court cannot formulate question of law as no contention can be looked into at the stage of entertaining Second Appeal, which was neither pleaded nor proved in any of the Courts below. Hence, the submission in regard to the principles of Hindu Law is misconceived as advanced for the first time in this Second Appeal. The Courts below were right to grant decree in favour of the Plaintiff after considering the facts pleaded. Thus, I do not find any essence or substance in the submissions advanced on behalf of the Appellant so as to require me to formulate any substantive question of law and to entertain second Appeal in the case in hand against the concurrent findings of facts recorded by the Courts below. Right of Appeal is neither natural nor inherent right attached to the litigation. Being substantive statutory right, it has to be regulated according to law in force. The conditions must be strictly fulfilled before Second Appeal being maintained. No Court has power to add or enlarge those grounds. The trial Court and the first Appellate Court have considered the evidence thoroughly to base their concurrent findings on evidence and the Appellate Bench would be slow to interfere.

5. Hence, the Second Appeal is dismissed.

6. In view of the dismissal of the Second Appeal itself, the Civil Application No. 845 of 2011 does not survive and the same is disposed of as such. At this stage, the learned Advocate for the Appellant prays for staying the operation of this order. The prayer is objected on behalf of the Respondents. However, the operation of this order shall remain stayed for a period of eight weeks.