
(2014) 04 BOM CK 0151
In the Bombay High Court
Case No : Second Appeal No. 323 of 1991

Ramrao Nilkanthrao Patil (Died through L.Rs.)	APPELLANT
Vs	
Dhondaji @ Ramesh, (Died through L.Rs.) and Others	RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1)

Citation : (2014) 5 BomCR 377 : (2014) 6 MhLj 797

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : Milind Patil, Advocate for the Appellant; G.R. Syed, h/f. Mr. G.P. Shinde, Advocate for Respondent Nos. 1(a) to 1(d) and Mr. H.F. Pawar, Mr. A.R. Nikam, Smt. Surekha Mahajan, Advocates for Respondent Nos. 4(a) to 4(c), Advocate for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The appeal is filed against judgment and decree of Regular Civil Appeal No. 239/1982 which was pending in the Court of 3rd Additional District Judge, Nanded. The judgment and decree of Regular Civil Suit No. 150/1979 filed by the present appellant for relief of partition and possession was partly decreed by the Trial Court, the Court from Degloor, and this decision is confirmed by the District Court in First Appeal. Both the sides are heard. The suit was filed in respect of agricultural lands situated at village Aloor, Tahsil Degloor, District Nanded. The plaintiff/appellant had claimed 7/18th share in all the agricultural lands. The relief is given to the plaintiff in respect of few suit properties, but the Courts below have held that lands Gat Nos. 630, 643 and 96 belong to defendant No. 5 and she is the absolute owner of these three lands. The Courts below have given 1/3rd share to the plaintiff in remaining lands. The decision only in respect of aforesaid three lands is challenged by the plaintiff.

2. The suit was filed by appellant through his maternal uncle and the maternal uncle represented as next friend. Defendant No. 6-Saraswatibai is the mother of

plaintiff. Defendant No. 5-Anusayabai is the step-mother of plaintiff. Nilkanthrao, father of plaintiff, had married two wives. Anusayabai is first wife and as Nilkanthrao had no son from Anusayabai, he married with defendant No. 6. Defendant No. 4 is daughter of defendant No. 5. Defendant No. 1 is a son of defendant No. 6 and defendant Nos. 2 and 3 are daughters of defendant No. 6.

3. It is the case of plaintiff that all the suit properties were ancestral properties of his father, Nilkanthrao. It is contended that in revenue record of few lands the names of defendant Nos. 5 and 6 were entered at the instance of Nilkanthrao, but they never became absolute owners of those properties as the properties belonged to joint Hindu family. It is contended that during his lifetime, Nilkanthrao was cultivating all his properties including the properties which were shown to be owned by defendant Nos. 5 and 6.

4. It is the case of plaintiff that his relations with defendants are not cordial and he is living with is maternal uncle. It is his case that the defendants are refusing to give his share and so, he is required to file suit.

5. The suit proceeded ex-parte against defendant Nos. 3 and 6, sister and mother of plaintiff. Defendant Nos. 1 and 2 filed consent written statement. Only defendant Nos. 4 and 5 contested the suit.

6. It is the case of defendant No. 5 that after the second marriage, the dispute started between the two wives of Nilkanthrao. It is contended that due to the dispute, Nilkanthrao gave land survey No. 29/1, 29/2, 30 and Malal land No. 6A and 11 to defendant No. 5 in lieu of the maintenance. It is her case that possession of these properties was given to her by Nilkanthrao and her name was entered in title column in revenue record.

7. It is the case of defendant No. 5 that property admeasuring more than 29.68 Hectors was with Nilkanthrao and he gave only 6 Hectors 90 R. portion to defendant No. 5. It is contended that in the year 1960 this property was given to her and since then she has been cultivating the property separately. It is her case that in view of provisions of section 14 of Hindu Succession Act, 1956, she has become absolute owner of these lands. These lands are now given numbers as Gat Nos. 630, 96 and 643.

8. It is the case of defendant No. 5 that properties were given to defendant No. 6 also in lieu of maintenance and the name of defendant No. 6 was also entered in the revenue record of those lands. It is contended that plaintiff, defendant No. 6 and defendant Nos. 1 to 3 have joined hands to deprive defendant No. 5 of her property. It is contended that defendant No. 1 had taken some steps and he had got entered his name in the revenue record in respect of lands given to defendant No. 5. It is contended that the said entry was challenged by defendant No. 5 and by the last decision dated 16.4.1977 the revenue authority, Revenue Commissioner directed to again enter her name as the owner.

9. On the basis of aforesaid pleadings, issues were framed by the Trial Court.

Both the sides gave evidence. The Trial Court has held that Gat No. 630, 643 and 96 were given to defendant No. 5 by Nilkanthrao in 1960 and defendant No. 5 has become owner of these lands by virtue of section 14(1) of Hindu Succession Act, 1956.

10. The First Appellate Court has held that there is collusion between plaintiff on one hand and defendant Nos. 1 to 3 and defendant No. 6 on the other. The First Appellate Court has held that these defendants want to deprive defendant No. 5, the first wife of Nilkanthrao, of the properties given to her. The First Appellate Court has held that Nilkanthrao had made family arrangement due to the dispute between the two wives and in the arrangement, he had allotted the aforesaid lands to defendant No. 5. The First Appellate Court has held that since 1960 defendant No. 5 has been enjoying these properties as absolute owner. It is held that the properties were given to defendant No. 5 either in lieu of maintenance or under family arrangement.

11. By the order dated 23.8.1991, this Court framed substantial question of law like, "Whether Saraswatibai and Anusayabai have become absolute owners of properties given to them by Nilkanthrao in view of section 14(1) of Hindu Succession Act, 1956?" The learned counsel for the appellant was allowed to argue on following points also and they are treated as substantial questions of law formulated by this Court.

(i) Whether Nilkanthrao was entitled to partition the suit properties and give the disputed properties to defendant No. 5?

(ii) Whether the Courts below have committed error in holding that defendant No. 5 has been enjoying disputed properties as owner since 1960?

(iii) Whether the First Appellate Court has committed error in holding that, there was family arrangement and under the arrangement, Nilkanthrao gave the disputed properties to defendant No. 5?

(iv) Whether the Courts below have committed error in giving importance to the revenue entries made in favor of defendant No. 5?

12. Before considering the evidence, it needs to be kept in mind that defendant No. 5 was admittedly the first wife of Nilkanthrao. The second marriage with defendant No. 6 took place only because Anusayabai could not give a son to Nilkanthrao. It is not disputed that on the basis of the application given by Nilkanthrao to revenue authority, mutation Nos. 264 and 265 came to be made and the disputed properties came to be given to Anusayabai. As per the record, the mutation was sanctioned on 14.12.1960. The mutation shows that Nilkanthrao had informed to the revenue authority that he had two wives like Anusayabai and Saraswatibai and as there was dispute between them, he had partitioned the properties and he had given share to Anusayabai (elder wife) and Saraswatibai. The revenue record shows that as per the aforesaid mutations, the names of both Anusayabai and Saraswatibai were entered in title column and

also in crop cultivation column of the lands given to them. It appears that an attempt was made to show that application was given by Anusayabai and she had requested to revenue authority to enter the name of defendant No. 1 in the revenue record of the lands given to her by Nilkanthrao. An attempt was made to show that Anusayabai had informed that partition had taken place and in view of partition, the entries need to be made. As the defendant No. 5-Anusayabai had become absolute owner, there was no question of transfer of title in respect of these lands in favour of defendant No. 1 by making such application by her. She could not have been treated as member of Hindu joint family for this purpose. The oral evidence and the record shows that no attempt was made by plaintiff or defendant No. 1 to show that the partition had really taken place in the year 1965 and in that partition, some property was given to Anusayabai. It can be said that everything which was given to Anusayabai was again shown to be given to defendant No. 1. However, the entry made in favour of defendant No. 1 was cancelled by the revenue authority and the order of revenue authority became final in the year 1977.

13. As per the record, Nilkanthrao was having land admeasuring 29.68 Hectors. Out of this area, the land admeasuring 6 Hectors 90 R. was given to Anusayabai and land admeasuring 4 Hectors 20 R. was given to Saraswatibai by Nilkanthrao. The record shows that the mutation entry made in favour of Saraswatibai was never challenged by plaintiff or defendant No. 1, issue of defendant No. 6. Evidence is given by defendant No. 5 that the lands given to her were of low quality and so more portion was given to her than Saraswatibai. Defendant No. 6 did not appear in the suit and in view of the facts and circumstances, the First Appellate Court has rightly held that there is collusion between her and plaintiff.

14. The evidence of next friend of plaintiff, who is maternal uncle shows that plaintiff, defendant No. 1, defendant No. 2 and defendant No. 6 were living together in the same house. The revenue proceeding record shows that before revenue authority Saraswatibai represented plaintiff as his next friend and also guardian. She represented her other son and daughters also. The revenue record also shows that name of defendant No. 6 was entered in revenue record as guardian of defendant Nos. 1, 2 and plaintiff after the death of Nilkanthrao. All these circumstances are sufficient to infer that these persons want to deprive defendant No. 5 of the properties given to her by Nilkanthrao. There is oral evidence to the effect that defendant No. 5 has been in separate possession of these lands. Her possession is since 1960. These circumstances need to be kept in mind while appreciating the rival cases and while applying the law.

15. The Trial Court has held that u/s 14(1) of Hindu Succession Act, 1956, defendant No. 5 has become absolute owner. The aforesaid properties were given to defendant No. 5 in the year 1960. On the legal point, there is not much discussion made by both the Courts. The First Appellate Court has held that the property was given to defendant No. 5 in family arrangement or in lieu of maintenance. The provision of section 14(1) of Hindu Succession Act, 1956 is as

under:-

14. Property of a female Hindu to be her absolute property.-Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

16. For using the provision of section 14(1), the conditions laid down in that section need to be satisfied. The provision is applicable only if limited estate, interest was created in favour of the wife and she was holding the property when the provision came in force. If the property was given to her to hold it as owner in lieu of maintenance and she was expected to live separate, such property would become her absolute property. Hindu Law regarding power to alienate co-parcenary property is mentioned at para 253 in Hindu Law by Mulla (21st Edition). The law mentioned in para 240 and 254 shows that the Manager to the extent mentioned in para 240 and father to the extent mentioned in para 254 can alienate co-parcenary property. The Manager/Karta can alienate the property for value for legal necessity or for benefit of estate. Hindu is under legal obligation to maintain his wife as a relative and also as member of family of which he is Karta. Though the obligation of the husband is personal in nature, if the maintenance is not given and it is in arrears, the wife can proceed against the property also. In view of these circumstances, the alienation made by Manager for maintenance needs to be treated as alienation made for legal necessity.

17. The alienation made by Manager of joint Hindu family without legal necessity is not void, but voidable. According to Mitakshara Law as administered in this area, even a co-parcener may sell or otherwise alienate for value his undivided interest in co-parcenary property without the consent of other co-parceners. When the Manager of joint Hindu family governed by Mitakshara Law as administered in this area alienates more than his own interest in joint family property, the alienation which is not for legal necessity can be challenged by the other members of joint family. In such a suit, alienation made to the extent of the shares of such members can be set aside, but the alienation of his own interest made by the co-parcener or Karta cannot be set aside.

18. As per the provisions of Hindu Law, the alienation can be challenged by member of Hindu joint family who was in existence or atleast who was in mother's womb on the date of alienation. Present plaintiff was not in existence

on the date of alienation or partition made by his father and so, there was no right to plaintiff to challenge the disposal of the property made by his father prior to his birth. Further, if the alienee takes possession of the property, then in view of Article 109 of Limitation Act (Old Article 126), such alienation needs to be challenged within 12 years. If the son was minor on the date of alienation, he would get concession and he can challenge it within three years from the date of attaining the majority.

19. Para 322 of Hindu Law by Mulla shows that father has power to divide joint Hindu family property at any moment during his lifetime provided that he gives his sons equal shares with himself. The consent of sons for such partition is not necessary. In the case reported as Apoorva Shantilal Shah, HUF Vs. Commissioner of Income Tax, Gujarat-I, Ahmedabad, , the Apex Court has observed that father is entitled to effect even partial partition of joint Hindu family property by virtue of his right as patria potestas. If shares are unequal, the partition made by father will be binding on them as family arrangement, if it is acquiescence in by them. Thus, the partition will be good until it is set aside. Further the partition can be partial in respect of property or in respect of persons making it.

20. In the present case, on partition Anusayabai and Saraswatibai (two wives together) were entitled to have share equal to that of a son. At the relevant time, partition would have taken place amongst Nilkanthrao, his two wives and one son. Plaintiff was not born in the year 1960 and so, there was no need to carve out share for him. Thus, each wife had 1/6th share. Nilkanthrao had 1/3rd share and he could have given his own 1/3rd share also to Anusayabai in lieu of maintenance. So, it was possible for Nilkanthrao to partition the properties and give intimation to revenue authority to give effect to the partition effected by him. In view of provisions of Hindu Law, there was no need of execution of any separate document of conveyance in this case.

21. The aforesaid discussion shows that if the matter is considered from both the angles like the power of Manager to alienate the property for legal necessity and power of father to effect partition, the plaintiff had no right to challenge such act of his father.

22. Defendant No. 1 had already contested the matter against defendant No. 5 before revenue authority. He was there on the day when cause of action arose for him, in the year 1960. Defendant No. 1 preferred not to challenge the aforesaid partition. The suit was filed in the year 1978. As per the record and oral evidence, the possession of the property given to defendant No. 5 was with her since 1960. Thus, the suit filed in the year 1979 was barred by limitation as it was not filed within 12 years. The aforesaid facts show that father had got his share in the partition and so, under Hindu Law, the plaintiff, who was born subsequently had no right to reopen the partition.

23. The revenue record containing information like that of partition, family

arrangement given by Hindu Karta, father is always relevant. In view of powers of Karta and father, if the partition is not challenged, the entries made in revenue record at the instance of father can be accepted as the record of partition made on the basis of partition effected by father. In such a case, the report given by father becomes base for mutation. In view of the provisions of Hindu Law in such a case, the mutations cannot be ignored altogether.

24. Reliance was placed by the learned counsel for the plaintiff on the case reported as Shri Bhaguji Bayaji Pokale and others Vs. Shri Kantilal Baban Gunjawate and others, . The facts of the reported case were altogether different. There was no base at all for mutation and so, some observations were made.

25. For appellants reliance was placed on some reported cases like (i) Eramma Vs. Verrupanna and Others, , (ii) Mangal Singh and Others Vs. Shrimati Rattno and Another, , (iii) Shantabai Tajaram Kunbi Vs. Kashiram Doma Kunbi and others, , (iv) Kalawatibai Vs. Soiryabai and others, and (v) Sharad Subramanyan Vs. Soumi Mazumdar and Others, . In all these cases, the provision of section 14 of Hindu Succession Act, 1956 is discussed. There is no dispute over the propositions made in these cases. In the case of Kalawati cited supra, there is discussion of use of Article 65 of Limitation Act also. But, the facts of this case were totally different. In the last case of Sharad cited supra, under the will, right to enjoy the property was given after 1956 and so, it was held that limited interest had not become absolute property. There cannot be dispute over the propositions made in all these cases.

26. In the case reported as Gulabrao Balwantrao Shinde and Others Vs. Chhabubai Balwantrao Shinde and Others, , when property was given in lieu of maintenance by co-parcener and the plaintiff was in existence as other co-parcener and he had right by birth in co-parcenary property, the Apex Court held that to the extent of which the co-parcener had share in joint Hindu family property, he could have given the said property to his wife in lieu of maintenance. In this case 1/2 portion was claimed by way of partition by co-parcener and the suit was decreed to that extent.

27. The relevant facts and circumstances of the present case are altogether different and they are already discussed. As per the mutation, the partition was effected by father, Karta in 1960. He allotted 6 Hectar 90 R. portion to his first wife, defendant No. 5 and he gave almost similar share to his second wife. Even after giving such shares to two wives, there was sufficient property left, around 18 Hectors and this property came to defendant No. 1, atleast after the death of Nilkanthrao. It is already observed that evidence is given by defendant No. 5 that land allotted to defendant No. 5 was of low quality and so more area was given to her than the area given to defendant No. 6. In view of power of Karta and father, it was necessary to challenge the said act and within limitation. It is already observed that Nilkanthrao could have also given his 1/3rd share to his two wives. Thus, it cannot be said that something in excess to the share of wives or share of Nilkanthrao was given in partition by Nilkanthrao or he had exceeded

his powers. This Court holds that there was no need to consider the provision of section 14 of the Hindu Succession Act, 1956 in favour of defendant No. 5. All other points formulated as substantial questions of law are answered against the appellants. In the result, the appeal stands dismissed.