

(2017) 01 BOM CK 0145
In the Bombay High Court
Case No : 414 of 2014

Sau. Manjula Subhash Shingne, & Anr.	APPELLANT
Vs	
Ramdas Patilba Shiongne, & Ors.	RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Citation : (2017) 01 BOM CK 0145

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : A.V.Gawande, M.G.Bhangde, S.N.Tapadiya, P.B.Patil

Final Decision : Disposed off

Judgement

1. Heard finally by consent of Shri Gawande, the learned counsel for the appellant and Shri M.G.Bhangde, the learned Senior counsel, assisted by Shri S.N.Tapadia, Advocate. It is reported that the respondent No.4 was the owner of the land and he has sold it to the appellant. Hence, the interest of respondent No.4 and the appellant appears to be common.

2. On 04.01.2017, this Court passed an order as under;

The Trial Court passed a decree granting a declaration that the saledeed dated 26-11-1992 executed by the defendant No.2 in favour of the defendant No.1 in respect of the suit property, i.e. agricultural land bearing Survey No.41/3, admeasuring 10 acres and 28 gunthas, to the extent that the land of 2 acres out of the total land is not valid and, therefore, not binding upon the plaintiffs. The defendant No.1 is directed to deliver the possession of 2 acres of land to the plaintiffs. The lower Appellate Court has concurred with the findings recorded by the Trial Court and the decree has been maintained. The defendant Nos.3 and 4, who have purchased the suit property during the pendency of the proceedings, are before this Court in this second appeal.

The Courts below are concurrent in holding that the suit property was the

ancestral property and the plaintiffs had a share in it. The property was sold by the defendant No.2, the father of the plaintiffs, by executing the saledeed dated 26-11-1992 in favour of the defendant No.1. Prima facie, in view of the finding of the Courts below that the property was the ancestral property, the alienation of shares belonging to the plaintiffs was not binding. Shri M.G. Bhangde, the learned Senior Advocate, assisted by Shri R.M. Bhangde, Advocate, for the respondent Nos.1, 2 and 6, has raised a plea that the appellants are the purchasers of the suit property during the pendency of the proceedings in violation of the order of injunction passed by the Trial Court. Relying upon the decision of the Division Bench of this Court in the case of Keshrimal Jivji Shah and another v. Bank of Maharashtra and others, reported in 2004(3) Mh.L.J. 893, it is urged that the appellants have absolutely no right, title or interest and neither the appeal is maintainable at their instance nor they have any right to defend the suit.

On merits, Shri Gawande, the learned counsel for the appellants, has urged that the saledeed has been set aside upon holding that there was a lack of consideration and the issue to that effect was not framed by the Trial Court.

Upon hearing the learned counsels appearing for the parties, the matter requires consideration.

Hence, Admit, on the following substantial questions of law :

1. Whether the Courts below were right in passing a decree holding that the saledeed dated 26-11-1992 in its entirety is not binding upon the plaintiffs or whether the decree can be modified by excluding the share of the defendant No.2 in the suit property ?
2. Whether the appellant Nos.3 and 4, who are the purchasers of the suit property in violation of the order of injunction, have locus to file a second appeal, and whether the decree passed by the Trial Court, as confirmed by the lower Appellate Court, can be set aside at their instance ?

Respective counsels for the respondents waive service of notice.

At this stage, Shri Bhangde, the learned Senior Advocate, without prejudice to the contentions raised in this appeal, submits that the respondents are prepared to accept the modified decree by holding that the alienation to the extent of the share of the defendant No.2 would not be binding upon them. He further submits that the decree passed by the Trial Court can be modified to that extent so that the litigation can be put to an end.

Shri Gawande, the learned counsel for the appellants, seeks time to take instructions from his clients.

Hence, put up this matter on 9-1-2017"

3. Shri Gawande, the learned counsel appearing for the appellant submits that plaintiff No.1 Ramdas is not entitled to any share in the property and this

question will have to be decided by the trial Court. Upon such decision, the question will depend as to the extent of share the appellants/defendants shall be entitled to in the suit property. If it is found that the appellants are entitled to share which amounts to fragment and hit by the provisions of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947, then the appellant shall be entitled to claim compensation. It is also urged by Shri Gawande that the appellants have made certain improvements in respect of the irrigation facilities in the suit property and for that purpose also, they shall be entitled to compensation.

4. Shri Bhangade, the learned Senior Advocate submits that the matter can be remanded back for such determination by the trial Court and the respondent Nos. 1, 2, 3 and 6 shall have no objection for adopting such mode and the matter can be disposed of accordingly.

5. Hence, by consent of the learned counsels appearing for the parties, the following order is passed. The decree passed by the trial Court and confirmed by the appellate Court is required to be modified as under.

I] The suit is partly decreed.

II] It is declared that the sale deed dated 26.11.1992 executed by the defendant No.2 in favour of the defendant No.1 to the extent of share of the plaintiff in the suit property is not valid and hence not binding upon the rights of the plaintiffs.

III] The aforesaid decree shall be subject to adjudication by the trial Court after deciding the issue as to entitlement and extent of share of the plaintiff No.1 in the suit property and consequently shall determine the question of compensation payable to defendant Nos. 3 and 4.

IV] The parties to appear before the trial Court on 27.02.2017. The trial Court shall permit the parties to lead evidence on the aspect of entitlement of the plaintiff No.1, if any, and also the extent of compensation for relinquishment of shares of the defendant Nos. 3 and 4, if any, and for carrying out improvements and shall decide it in accordance with law.

All the questions arising thereafter are kept open to be agitated.

The interim order passed by this Court shall continue to operate till the disposal of the suit by the trial Court. No costs.

The second appeal is disposed of.