
(2016) 07 BOM CK 0144
In the Bombay High Court
Case No : Second Appeal No. 125 of 1992

Shridhar s/o Bajirao Pawar	Vs	APPELLANT
Bajirao s/o Dhondiba Pawar		RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Citation : (2016) 5 AIRBomR 243 : (2016) 6 ALLMR 280

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

Bench : Single Bench

Advocate : Shri. S.S. Choudhari, Advocate, for the Appellant; Shri. D.N. Suryawanshi, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The appeal is filed against the judgment and decree of Regular Civil Appeal No.186/1983 which was pending in the Court of the learned Additional District Judge, Ambajogai, District Beed. The appeal was filed by original defendant No.2, purchaser against the judgment and decree of Regular Civil Suit No.139/1977 which was pending in the court of the Civil Judge, Junior Division, Ambajogai. The suit filed for relief of partition by the present appellant against the coparcener and the purchaser was decreed in their favour by the trial Court and this decision is set aside by the District Court and the transaction is protected. Both the sides are heard.

In short, the facts leading to the institution of the proceeding can be stated as follows :-

2. Plaintiff Nos.1 and 2 were minor on the date of the suit and they are sons of defendant.1 Bajirao. Plaintiff No.3 is the mother of plaintiff Nos.1 and 2 and the wife of defendant No.1. Defendant No.2 Shivaji is purchaser of one suit property from defendant No1.

3. The suit was filed in respect of two agricultural lands like Survey No.109/A admeasuring 5.4 acres, land Survey No.113/E admeasuring 2 acres 39 gunthas

both situated at Devla, Tahsil Ambajogai and one house property situated in the same village.

4. It is the case of the plaintiffs that defendant No.1 is addicted to bad habits including liquor and ganja and for satisfaction of bad habits he sold Survey No.109/A to defendant No.2 under sale deed dated 16-5-1974. It is contended that there was no consent of the plaintiffs for this transaction. It is contended that the price of the land was much more than the price mentioned in the sale document. It is contended that the sale proceeds were not utilised for the joint family of the plaintiffs and defendant No.1 and so this transaction is not binding on the shares of the plaintiffs. Relief of partition of this property and other properties was also claimed.

5. Defendant No.2 filed written statement and he contested the matter. He denied that defendant No.1 was addicted to liquor and other bad habits and for satisfaction of bad habits he had sold the property to defendant No.2. He denied that the sale proceeds were not utilised for the benefit of the family. He denied that price of the land was much more than the price for which it was sold to the defendant No.2.

6. It is the case of the defendant No.2 that the plaintiffs and defendant No.1 have been living together and even on the date of the suit they were living together. It is contended that the land Survey No.109 was not under cultivation and as the land was not yielding any income defendant No.1 decided to sell it. It is contended that the defendant No.1 was indebted. It is contended that defendant No.1 was intending to start some business and ultimately he had agreed to sell the property to defendant No.2 for consideration of Rs. 10,000/-. It is contended that on 12-2-1974 registered agreement was executed and then on 16-5-1974 by accepting remaining amount sale deed was executed by defendant No.1 in favour defendant No.2. It is contended that plaintiffs were present in the office of the Sub Registrar and so they had knowledge about the transaction. It is contended that defendant No.1 utilised this amount for family needs and also for his business which was hotel business started in the rented premises of Ambajogai Municipal Council. It is contended that all the plaintiffs and defendant No.1 are living there and the suit is filed by plaintiffs in collusion with defendant No.1.

7. Defendant No.1 did not appear in the suit and ex parte order was made against him. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The trial Court had decreed the suit by holding that the amount was not utilised for legal necessity of the family as it is the case that the amount was used for business which was newly started by defendant No.1. It was held that such need cannot be called as legal necessity under the provisions of the Hindu Law. The first appellate Court has considered the relevant record. The circumstance that there is apparent collusion between the plaintiffs and defendant No.1 is also considered and it is held that the property was sold for the needs of the family and the plaintiffs are benefited as the sale proceeds were

used for them.

8. The appeal was admitted by this Court, other Hon"ble Judge, on 20-3-1992 but substantial questions of law were not formulated. In view of nature of dispute and the aforesaid finding given by the District Court, following substantial question of law is considered in the present appeal.

Whether the District Court has committed error in holding that the property was sold for legal necessity as defined by the provisions of the Hindu Law ?

9. On the date of the suit age of plaintiff No.1 was 15 years and age of plaintiff No.2 was 12 years. Suit was filed in the year 1977. The documents like agreement of sale and the sale deed are proved and exhibited by the trial Court. Exhibit 39, agreement dated 12-2-1974 shows that out of consideration of Rs. 10,000/- amount of Rs. 1000/- was accepted by defendant No.1 and the agreement was registered in the office of the Sub Registrar. The amount was paid to defendant No.1 in presence of the Sub Registrar and there is such endorsement on Exhibit 39. Copy of sale deed is at Exhibit 43. It was executed on 16-5-1974. In this document it is mentioned that amount of Rs. 8,500/- was already paid by the purchaser from time to time to the vendor. Amount of Rs. 1500/-, remaining consideration, was paid on the date of execution of the sale deed.

10. It is true that there is no mention about the purpose for which the land was sold in the aforesaid two documents. The recitals of the documents are relevant in such cases but they are not the conclusive proof of the purpose. In such cases, from the substantive evidence and other circumstances inference needs to be drawn by the Court.

11. Defendant No.2 has given evidence to prove the legal necessity. He has given evidence that the plaintiffs and defendant No.1 were living in joint Hindu family even on the date of the suit. Defendant No.2 has given evidence that he had visited the land when he entered into agreement. He has given evidence that the land was fallow, not under cultivation for many years and defendant No.1 had no bullocks or agricultural implements. He has given evidence on the market price of the land at the relevant time. Evidence is given that remaining lands were given for cultivation by plaintiffs and defendant No.1 and the plaintiffs and defendant No.1 had shifted to Ambajogai for doing business. He has given evidence that the defendant No.1 is behind the suit and there is collusion between plaintiffs and defendant No.1. In the cross-examination he has admitted that he had not visited the land prior to the date of purchase but there is evidence in examination-in-chief of aforesaid nature and in the cross-examination also he has given evidence that he had ascertained that the land was fallow. He has given evidence that there are two more lands with the family of the defendant No.1 like Gat No.5 and other land bearing Gat No.296 of village Devla. He has given evidence that the defendant No.1 had informed that he purchased articles for his hotel business when the sale deed was executed. He

has given evidence that the plaintiffs were present when the agreement was made and when the sale deed was executed. He has given evidence that plaintiffs and defendant No.1 had shifted to Ambajogai, they were doing business there and so they had disposed of the suit property by selling it to defendant No.2. One Babruwahan is examined by defendant No.2 in support of his version that defendant No.1 was not cultivating the land and he had shifted to Ambajogai. Evidence is given on the market price of the land by this witness and he is attesting witness on the sale deed.

12. Meaning of legal necessity is given in para 241 of the Hindu Law by Mulla. This para shows that legal necessity includes family debts incurred for family business or other necessary purpose. It is mentioned that in case of manager, who is other than the father, it is not enough to show merely that the debt is pre-existing debt. It is also made clear that seven instances mentioned in this paragraph are not the only indices of legal necessity and it is duty of Court to ascertain as to whether there was legal necessity from the facts of that case. One illustration shows that for maintenance of coparceners and of the members of their family the property can be sold. Under Hindu law, Karta of joint Hindu family has the power to make alienation of the joint Hindu family property for legal necessity. Father, Karta, has such power and it can be said that in view of the meaning of legal necessity given in para 241 his powers are larger than the powers of other Karta. As the Karta is required to take care of all the members of the Hindu joint family, Hindu law has given him discretion and he is to arrive at decision as to whether there is legal necessity. He is also having jurisdiction to decide in what way such legal necessity can be fulfilled, either by mortgage or sale. Such use of discretion is however subject to the scrutiny of the Courts. Para 243 from the same book shows that the purchaser is expected to make inquiry with regard to legal necessity but he is not expected to keep follow up to ascertain as to whether the proceeds were really applied for legal necessity.

13. In the pleadings of the plaint, plaintiffs have contended that they were doing business of inn at Ambajogai. There is record like copy of judgment delivered in Civil Suit No.167/1976 which was filed by Chief Officer, Ambajogai Municipal Council against defendant No.1 in respect of rented premises. The judgment shows that one premise was with defendant No.1 on rent basis and notice was served on him on 11-2- 1975 to vacate the premises and then suit was filed on 30- 4-1975. Suit was decreed on 30-6-1977.

14. In the present matter agreement was entered into on 12-2-1974 and it can be said that possession of the property was with the family of the plaintiffs and defendant No.1 from prior to the date of agreement. Though in the pleadings it is the case of the plaintiffs that they were driven out of the house by defendant No.1 and then they had started business in the premises in Ambajogai, the record is otherwise and it shows that the premises was given on rent basis to defendant No.1 and he was the proprietor of the said business. When there is collusion between defendant No.1 and plaintiffs, some inference needs to be

drawn against the plaintiffs and defendant No.1 as there is power with the Karta of joint Hindu family to decide as to whether there is legal necessity for selling the property.

15. Learned counsel for the respondent placed reliance on cases reported as 2010 (5) Mh.L.J. 713 (Ramchandra v. Vasant), A.I.R. (33) 1944 Oudh 92 (Sant Bakhsh Singh v. Lachhman Prasad) and the decision given of this Court, other Hon"ble judge in Second Appeal No. 287/1989 (between Suryakant Manikrao Deshmukh and Mahavir Sahebrao Maske). In those cases also when the question of legal necessity was involved, the suit involving setting aside of the sale, made by father and father did not turn up to give evidence, presumption was drawn that there was legal necessity. In the present matter also there is evidence that the plaintiffs and defendant No.1 are living together and they are benefited by the consideration. As there is no evidence, the inference is not possible that defendant No.1 was addicted to bad vices and the sale proceeds were not utilised for the family. If they are living together there was some reason for the sale and the reason given by the defendant No.2 is that the land was not giving sufficient income and so they started business at Ambajogai. Thus necessary probability was created by the defendant No.2 in his favour on the point of legal necessity and the District Court has not committed any error in holding that this burden is discharged by the purchaser. In the result, the point is answered against the appellants and the appeal is dismissed.