
(2000) 06 BOM CK 0100

Bombay High Court

Case No: Second Appeal No. 408 of 1985

Shantabai Todkar and
Others

APPELLANT

Vs

Sheshappa Kallappa
Todkar

RESPONDENT

Date of Decision: June 23, 2000

Citation: (2000) 102 BOMLR 133

Hon'ble Judges: S. Radhakrishnan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S. Radhakrishnan, J.

In the above matter, the brief background is that the Respondent herein being the original plaintiff had filed a Regular Civil Suit No. 321 of 1976 against the present Appellants for partition of the ancestral property and had obtained half share therein and also for mesne profits. It appears that the said ancestral property consisting of agricultural lands bearing Survey No. 596/2 admeasuring 1 Hectare and 24 Ares and Survey No. 1137 admeasuring 80 Ares and suit property bearing C.T.S. Nos. 2766, 2782 and 2949 were situated at Mouja Ashta. The Respondent's father Kallappa Todkar was a businessman. It appears that he had suffered heavy loss in the business and he was fearing that he may loose all the ancestral property as well as the self acquired properties. In view thereof, to protect the interest of the family members and for their maintenance the said Kallappa Todkar had executed a Deed of Settlement dated 3rd July, 1934. By the said Deed of Settlement the said Kallappa Todkar mainly intended that his family members should not be thrown out of his field and that they should be provided for their maintenance. Accordingly the said Deed was executed and the said Deed was executed in favour of Annappa who was the brother of the Respondent herein. It appears that in 1934 till 1976 everything was smooth. The Respondent herein and Annappa had half share in the said property and were mutually enjoying the same and suddenly after the

death of Annappa on 11th July, 1977 that the present Appellant No. 1 had declined delivery of Respondent his share. Under these circumstances the present Respondent who was the original plaintiff was constrained to file this suit being Regular Civil Suit No. 321 of 1976 before the Court of Joint Civil Judge, Junior Division, Islampur for the relief of partition of the said property viz. properties 1, 2, 3, 4 and 5 as mentioned hereinabove for half share in that, excepting the properties at serial No. 4 which was already acquired in Town Planning.

2. The learned Trial Judge had framed the following points:-

(1) Does the Plaintiff prove that the settlement dated 3rd July, 1934 in respect of the properties at Sr. Nos. 1 and 3 in para 2 of the plaint was effected in the name of deceased husband Defendant No.1 under guardianship of mother Tanubai in order to save these properties from liquidation as alleged in para 3 of the plaint ?

(2) Does the Defendant prove that they are their predecessor Annappa Todkar ousted the Plaintiff from the said properties for more than 12 years prior to the suit ?

(3) Whether the Plaintiff is entitled to the partition and possession of his half share out of the suit properties ?

(4) What decree or order ?

3. Ultimately the learned Trial Judge, after appreciating the evidence and documents on record and after hearing the parties had decreed the suit and granted half share of the suit properties excepting the property at Serial No. 4 which was already acquired in town planning. The learned Trial Judge had directed the properties at Serial Nos. 1 and 2 to be partitioned by Collector, Sangli through his Gazetted Subordinate. As far as partition of properties at Serial Nos. 3 and 5 were concerned the same to be effected by appointing a Commissioner through Court by filing a separate execution proceedings.

4. Aggrieved by the aforesaid decree dated 27th April, 1981, the present Appellants had filed a Civil Appeal bearing No. 273 of 1981 before the Additional District Judge, Sangli at Sangli. The learned Lower Appellate Court had, while deciding the said appeal, framed the following issues:-

(1) Whether the settlement deed, dated 3rd July, 1934, executed by Plaintiffs father Kallappa Todkar in favour of Anna Kallappa Todkar is creating a valid title in favour of Anna alone ? As regards the property of S. No. 596/2 and the house property of C.T.S. No. 2766 ?

(2) Whether all or any of the suit properties are self-acquired and separate properties of Anna ?

(3) Whether all the suit properties are joint properties of Plaintiff and Anna?

(4) Whether the Plaintiff is entitled to claim and get half share in the suit properties ?

(5) Whether the decree passed by the Trial Court is to be modified ?

(6) What order ?

5. After a detailed consideration of the evidence, the learned Additional District Judge had upheld the Lower Court's decree and slightly modified the Appeal to the extent of manner of partition the half share granted in favour of the plaintiff was not disturbed.

6. Being aggrieved by this judgment and order dated 31st December, 1984 passed in the above Civil Appeal No. 273 of 1981 the original Defendants have preferred the Second Appeal and are seeking to raise the following substantial question of law:

1. Whether the recitals in the said Deed of Settlement to the effect that the deceased Kallappa had suffered losses in the trade and, therefore, so as to make provisions for the maintenance of his son Anna, he was executing the Deed of Settlement in favour of the deceased Kallappa intended to create an absolute title in deceased Anna or that the deceased Kallappa did not intend to create an absolute title in Anna ?

2. Whether the Deed of Settlement executed on 3rd July, 1984 was binding on the plaintiff as he was not born on the date of execution of the Deed of Settlement ?

3. Whether the suit was within the period of limitation as provided under Article 113 of the Limitation Act ?

7. Before considering these issues, the learned Counsel for the Appellants has made it clear that as far as property at Serial No. 4 is concerned, the same has already been acquired by the Town Planning Authority, as such there is no dispute, and also as far as properties at Serial No. 2 and 5 are concerned, there is no dispute. The only dispute is with regard to the properties at Serial Nos. 1 and 3 being Survey No. 596/2 admeasuring 1 hectare and 24 acres and C.T.S. No. 2766. The said Deed of Settlement dated, 3rd July, 1934 executed by Kallappa in favour of Annappa i.e. the husband of Appellant No. 1 was basically executed for the purposes of providing for their maintenance and their family members so that they should not be thrown out on the streets. The recital of the document very clearly indicates the objects of the said adjustments of the Deed of Settlement. Under these circumstances, the learned Judge, after appreciating all the evidence has given a categorical finding that by that Deed the said Annappa being the husband of the Appellant No. 1 could not become the sole owner. Thereafter, the Lower Appellate Court, after considering the evidence, reiterated the same finding viz., the said Deed was mainly executed to provide maintenance for the family members so that the interest is protected and by that document there is no intention to create any absolute title in favour of Annappa. The learned Lower Appellate Court has observed that there is no absolute evidence on record to show that Annappa was exclusively enjoying all these properties covered by the said document. In fact, para 10 of the said judgment the

learned Judge has observed as under:-

10. The Appellants have contended in their written statement that the properties were purchased by Anna from Basking Wale, but the property extracts of C.T.S. Nos. 2782 and 2949 at serial Nos. 7 and 8 show that from Basking Wale the property was purchased by Sheshappa Kallappa Todkar, There is nothing on record to show that Anna had purchased those properties from Basking Wale. No sale deeds were produced on record to show that those properties were self-acquired and separate properties of Anna Kallappa Todkar. Though the property cards show that the sale deed was in the name of Sheshappa, Sheshappa himself has clearly admitted in his claim that the property at serial No. 2 i.e. land of S. No. 1137 and also properties of C.T.S. Nos. 2782 and 2949 are purchased jointly by him and Anna from Basking Wale. Therefore, in these circumstances, those properties could not be said to be self-acquired and separate properties of Anna.

8. The learned Counsel for the Appellants has contended that though these documents purport to be for the maintenance whereas it should be construed as a document whereby absolute title created in favour of the said Annappa. Both the Lower Courts have examined the evidence and both the Courts have given findings that the said documents do not create any absolute interest in favour of Annappa and in fact have observed that this being an ancestral property such absolute interest could not have been created by the said lease and at the most they could be said to be holding in trust on behalf of the family members for their benefit. Both the Lower Courts have been concurrent on this issue and I do not find any substantial question of law involved with regard to the above.

9. In this context the learned Counsel for the Respondent has relied on the judgment of Apex Court in Prouash Chandra Dalui v. Biswanath Banerjee AIR 1989 SC 3834. The Supreme Court has very categorically held that every contract has to be construed with reference to its object and the whole of its terms. The Supreme Court in para 9 has observed as under:-

9...The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected ex antecedent bus et consequentibus; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible.

10. With regard to the second issue, substantial question of law sought to be raised by the learned Counsel for the Appellant is that the Deed of Settlement dated 3rd July, 1934 was binding on the Respondent herein as he was not born on the date of execution of the settlement, that is to say as the Respondent was not born on 3rd July, 1934 he could not have acquired any interest and therefore the said Deed of Settlement was binding on the

said Respondent. There is no dispute that this is an ancestral property and as far as ancestral property is concerned it is a settled position in Hindu Law that the right to property accrues from the date of conception in the womb. In that behalf the learned Counsel for the Respondent also relied upon the judgment of this Court in [Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another](#), . There cannot be two opinions with regard to the above proposition of law, that in case of a Hindu as far as his interest in ancestral property is concerned the same accrues right from the date of conception in the womb and the same does not wait till the child is born. Hence I do not find any substance in the second substantial question of law, as the Respondent was already in the womb on 3rd July, 1934.

11. The third substantial question of law sought to be argued by the learned Counsel for the Appellants is that the suit is barred by law of limitation in view of the provisions of Article 113 of the Limitation Act. Article 113 of the Limitation Act provides for a limitation period of three years from the date when the right to sue accrues. Admittedly, in this case till Annappa died on 11th May, 1976, there was no problem at all and things were proceeding smoothly. After the death of Annappa on 11th May, 1976 when the present Respondent started demanding his share of the suit property the trouble started. The present Appellant No. I, widow of Annappa declined to deliver the Respondent's half share in the suit property on 1st August, 1976. Therefore, in this case the right to sue accrued on 1st August, 1976 and as such suit was filed very much within the prescribed period of limitation. I do not find substance in this substantial question of law sought to be raised by the Appellants. Hence the Appeal is devoid of merits and stands dismissed, however, with no order as to costs.

12. Personal Assistant to issue an ordinary copy of the order to the parties.