

(2008) 03 BOM CK 0138

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 140 of 1999

Shriram Niwrutti Mahalle

APPELLANT

Vs

Pannalal Totala, Bhojraj

Khupchand Totala and Sau.

RESPONDENT

Gendabai Totala

Date of Decision: March 3, 2008

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 6, 8

Citation: AIR 2008 Bom 194 : (2008) 3 ALLMR 395 : (2008) 2 BomCR 737 : (2008) 4 MhLJ 28

Hon'ble Judges: C.L. Pangarkar, J

Bench: Single Bench

Advocate: V.G. Palshikar, for the Appellant; R.V. Kalia and V.N. Kakirde, Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

C.L. Pangarkar, J.

This is a second appeal by the unsuccessful defendant. The parties shall herein after be referred to as the plaintiff and defendant.

2. The facts giving rise to this appeal are as under One Narayandas Totala was the original owner of the suit site. Plaintiff. Pannalal is the adopted son of said Narayandas, he having been adopted on 3/7/1979. Said Narayandas died on 11/5/1981 leaving behind him the plaintiff as the only heir. The plaintiff, therefore, became the owner of the entire property upon death of said Narayandas. The plaintiff came to know that defendant No. 2 Bhojraj has illegally transferred the suit site to defendant No. 1 on 17/11/1984 by registered sale-deed. Defendant No. 3 Gendabai had given consent for such transaction. The plaintiff submits that the said alienation made by defendant No. 2 is illegal and not binding on him as he was minor at the time of alienation. It is contended that the plaintiff and his father

Narayandas possessed sufficient income to maintain the plaintiff and therefore there was no necessity for the transfer of the suit site. The said property was sold without any permission of the competent authority. The plaintiff submits that defendant No. 1 has unauthorisedly changed the nature of the suit property in 1987 and he therefore filed the suit for declaration that the alienation made by defendant No. 2 in favour of defendant No. 1 is void and also for an injunction to restore the status of the Northern side wall of the disputed site.

3. Defendant No. 1 resisted the suit. He admitted that he has produced the suit property under sale-deed executed by defendant No. 2. He also submits that he has made several improvements in the suit property and spent sum of Rs.20,000/- It is contended that defendant No. 2 and deceased Narayandas were living jointly and the property was joint Hindu Property. Defendant No. 2 was managing the affairs of the joint family and defendant No. 2 sold the plots for legal necessity. It is also contended that defendant No. 1 is a bonafide purchaser for value without notice.

3. Defendants Nos.2 and 3 admitted the claim of the plaintiff.

4. The learned judge of the trial court found that the sale-deed executed in favour of defendant No. 1 was void and the plaintiff was the owner of the suit property and the defendant was not the bonafide purchaser. Holding so, he decreed the suit.

5. The learned judge of the appellate court concurred with the findings recorded by the trial court and dismissed the appeal.

6. The second appeal was admitted on the following substantial question of law by Kulkarni, J.

"Admit" on the following substantial questions viz. i) as to whether in the absence of there being any issue regarding legal necessity, prejudice is caused to the appellant's claim and the defence before the two Courts below ?

ii) Whether the lower appellate court was justified in proceeding on the hypothesis that the nature of the property was proved to be not a joint family property and consequently the concept of need for a legal necessity was not required to be employed by the Court in adjudicating the suit claim ?

iii) In the event of a finding that the suit property was a joint family property, what is its effect on the claim as adjudicated ?

7. The case of the plaintiff is very specific that he was adopted by one Narayandas his uncle on 3/7/1979 and thereafter Narayandas died on 11/5/1981. It is not disputed that on date of sale the plaintiff was a minor and he has instituted the suit within three years of attaining majority. It is alleged that Narayandas left behind him the suit property and other property and the plaintiff being the adopted son is the only heir and successor to the property. The suit property belonged to Narayandas alone is also born out by the contents of the sale-deed (Exh.47). It is stated by PW 1

Pannalal Totala the plaintiff that he is the sole successor or heir to Narayandas. Although it is suggested to him in the cross-examination that Narayandas had daughters, that is denied by PW 1 and no further questions are put to him. Obviously, therefore, the plaintiff was the sole surviving co-parcener and the sole owner of the suit property. It was, therefore, not a joint family property. It was contended that there was joint family of Narayandas and defendant No. 2 Bhojraj. Defendant's such stand cannot be accepted since sale-deed executed in favour of defendant No. 1 clearly says that it was the property of Narayandas and it came to his son Pannalal. After Narayandas, the plaintiff being sole surviving coparcener became the exclusive owner and there being no other member in the family, it could not become joint family property. Since it was not a joint family property, there was no question of transfer being for legal necessity or otherwise. Section 6 of the Hindu Adoptions and Maintenance Act authorises a natural guardian to deal with the interest of a minor in the joint family property but not with his separate property. Here, since the plaintiff was sole surviving co-parcener, he was exclusive owner. The natural guardian, therefore, could not deal with the property due to the provisions contained in Section 8 of the said Act.

8. In fact, in this case it could be said that defendant No. 2 is not at all the guardian of the plaintiff. The plaintiff is given in adoption to Narayandas on 3/7/1979, therefore, defendant No. 2 who is his natural father did not remain his father or guardian in the eye of law. He was, therefore, not entitled to act as a guardian of the minor after he was given in adoption. He could not have acted as guardian of the minor unless he was so appointed as guardian under the Guardian and Wards Act. He is admittedly not appointed as a guardian under the Guardian and Wards Act. He, therefore, had no authority to act for minor and therefore, had no authority to sell the minor plaintiff's property. Such transfer was, therefore, by a person not authorised by law and also by a person not having any interest in the property. Therefore, such transfer could not transfer the right, title or interest in the property at all. The sale-deed was, therefore, rightly held to be void by the learned judges of the courts below. Since I find that the property was not a joint family property and defendant No. 2 had no authority to sell the property not being a guardian, the sale is void. There is, therefore, no substance in the appeal. The judgments and decrees passed by the lower courts need to be confirmed and the appeal dismissed. Order accordingly.