SUPREME COURT OF INDIA

Sunder Das

Vs.

Gajananrao

C.A.No.3550 of 1994

(N. P. Singh and S. B. Majmudar JJ.)

13.12.1996

JUDGEMENT

S.B. MAJMUDAR, J.: -

1. This appeal on the grant of special leave to appeal under Article 136 of the Constitution of India is directed against the judgment and order of a Division Bench of the High Court of Madhya Pradesh in First Appeal No. 2 of 1979, whereby the Division Bench dismissed the First Appeal and confirmed with modification the decree passed by the trial Court against the appellants in Civil Suit No. 13A of 1978, in the Court of learned District Judge, Datia. The facts leading to this appeal shortly stated are as under.

2. The appellants are the original defendants against whom respondents Nos. 1 to 3, original plaintiffs, filed the aforesaid suit for a declaration that the registered Sale Deed dated 30th May, 1959, executed by their father, respondent No. 4 in this appeal who was original defendant No. 6 in the suit, in favour of the present appellants is void and inoperative at law and for restoration of the possession of the suit house bearing Municipal No. 1153/1 situated in Rajgarh locality of Datia town

in the State of Madhya Pradesh. For the sake of convenience we will refer to the appellants as original contesting defendants and respondents 1 to 3 as plaintiffs in the latter part of this judgment. Respondent No. 4, father of the plaintiffs, was joined as defendant No. 6 in the suit. The case of the plaintiff is that their father original defendant No. 6 had executed registered Sale Deed dated 30th May 1959, conveying the suit house to the contesting defendants for a sum of Rs. 1800/-and delivered possession of the said house to them. According to the plaintiffs the suit house was their ancestral property in which they had got undivided 3/4th interest. That their father, defendant No. 6, had no right to transfer the suit house in favour of the contesting defendants and consequently the said Sale Deed was not binding on them.

3. The said suit was contested by the contesting defendants on the ground that the house belonged exclusively to their vendor defendant No. 6 and plaintiffs had no interest therein. It was alternatively contended that even assuming that the suit house was an ancestral house wherein the plaintiffs had undivided interest defendant No. 6, their vendor. had alienated the said house for family necessity and his transaction was binding on the plaintiffs. Defendant No. 6, father of the plaintiffs, on the other hand supported the plaintiffs.

4. Learned Trial Judge after recording the evidence came to the conclusion that the suit house was an ancestral property of the parties wherein the plaintiffs had 3/4th undivided interest while their father defendant No. 6 had 1/4th interest and consequently the Sale Deed dated 30th May, 1959, was voidable to the extent of 3/4th share of the plaintiffs. Accordingly the learned Trial Judge directed the plaintiffs to be placed in joint possession of the suit house along with the contesting defendants 1 to 5. Being aggrieved by the aforesaid judgment and decree of the trial Judge the contesting defendants carried the matter in First Appeal before the High Court. As stated earlier Division Bench of the High Court was pleased to dismiss the same. However, the cross objections filed by the plaintiff, were allowed and accordingly Trial Court's decree was modified as under :

"The suit of the plaintiffs for possession is decreed; the contesting defendants to deliver possession of the suit house to the plaintiffs; but the execution of the decree in so far as it directs the contesting defendants to deliver possession of the suit house to the plaintiff shall remain stayed for a period of six months from today and if before the expiry of that period the contesting defendants bring a suit for general partition then the stay should continue till the disposal of the suit, but if no such suit is brought within the period the stay of execution of the decree shall stand cancelled on the expiry of the period of six months and the plaintiff, shall be entitled to obtain the possession of the suit house."

It is the aforesaid decree in favour of the plaintiffs as confirmed with modification by the Division Bench of the High Court that is brought on the anvil of scrutiny of this Court in the present proceedings by the dissatisfied contesting defendants.

5. At the outset it may be stated that at the suggestion of the Court the contesting parties were given time to explore any possibility of settlement. But we were informed that settlement was not possible. However, in view of the fact that two of the plaintiffs were minors at the time when their father executed the impugned Sale Deed and as the prices of the properties have naturally got escalated over years the Court suggested to learned counsel for the appellants, contesting defendants, that in case they succeed in this appeal they may ex gratia make payment of suitable amount to the respondent-plaintiffs to avoid any possible heart burning to them. We are happy to note that the suggestion of the Court was accepted by the appellants, contesting defendants. Appellant No. 1 Sunder Das who was present in the Court has filed a written undertaking on affidavit to the effect that having consulted Laxman, son of Tehalrarm, appellant No. 2 in this appeal he was giving undertaking to this Court that if the appeal filed on their behalf is allowed and the judgment and decree are set aside they shall pay ex gratia an amount of Rs. 2,00,000/- to the plaintiff-respondents Gajanan Rao, Ravindra Kumar and Govind Rao within three months from the date of the delivery of the judgment. We were also informed by the learned counsel for the appellants that similar affidavits will be tiled by the remaining appellants within one week of the delivery of the judgment in case the appeal is ultimately allowed and the suit of the plaintiffs is dismissed. They undertake to make payment Rs. 2,00,000/- to the plaintiffs aforesaid ex gratia with a view to alleviate likely heart burning of the plaintiffs in such an eventuality. We appreciate the good gesture made by the appellants. It is now time for us to deal with the merits of the appeal.

6. We have heard the learned counsel for the contending defendants as well as for the respondent-plaintiffs in support of their respective cases.

7. Learned counsel for the contesting defendants submitted that both the Courts below had patently erred in law, as well as on facts in taking the view that the suit for challenging the impugned Sale Deed was within limitation. According to the learned counsel the suit was barred by Article 109 of the Limitation Act. On merits it was contended that the suit house belonged exclusively to the contesting defendants' vendor original defendant No. 6, father of the plaintiffs and, therefore, the plaintiffs had no right to challenge the said Sale Deed. It was alternatively contended that even assuming that the suit property was ancestral property as plaintiffs' father defendant No. 6 was the 'karta' of the joint Hindu family the Sale Deed executed by him was perfectly legal and valid and binding on the plaintiffs unless it was shown that the Sale Deed was vitiated on the ground of it being executed for paying off a debt incurred by their father to an illegal or immoral purpose. That there was no such case pleaded by the plaintiffs. It was next contended that the said transaction was for legal necessity and for family requirement as mentioned in the Sale Deed and these recitals were binding on defendant No. 6. That there was no cogent evidence led by the plaintiffs to rebut these recitals in the Sale Deed. That both the Courts below were patently in error when they took the view that the transaction was not binding on the plaintiffs. That the suit was purely a collusive suit got filed by defendant No. 6 through his sons after eleven and a half years of the transaction. That they stood by the transaction for all these years, allowed the contesting defendants to spend huge sums of money for reconstruction and renovation of the house and that this suit was filed merely to knock out more money from the contesting defendants and to harass them. Hence it was liable to be dismissed even on merits.

8. On the other hand learned counsel Shri Khanduja for the respondent-plaintiffs submitted that both the Courts on appreciation of evidence had come to a concurrent finding of fact that there was no legal necessity for defendant No. 6 to execute the Sale Deed. That defendant No. 6 was not shown to have incurred any debt or was in such a stringent economic condition that he was required to sell off the suit house to the contesting defendants and, therefore, on the evidence on record the conclusion reached by both the Courts below that defendant No. 6, father of the plaintiff could not legally alienate the undivided 3/4th interest of the plaintiffs in the suit house, remained well justified and called for no interference in this appeal.

9. Having carefully considered the aforesaid rival contentions we find that the judgment and decree as passed by trial Court and as confirmed with modification by the Division Bench of the High Court cannot be sustained. However, before we proceed to consider the merits of the case, we may in the first instance deal with the question of limitation, for filing the present suit. Article 109 in the Schedule to the Limitation Act, 1963, provides for a period of limitation of twelve year for a Hindu governed by Mitakshara Law who files a suit to set aside his father's alienation of ancestral property and twelve years period begins from the date when alienee takes possession of the property. In the present case the contesting alienees took possession of the suit property on 30th May 1959, when they got registered Sale Deed in their favour. Counting 12 years from 30th May, 1959 limitation for filing the suit or challenging the said alienation would expire by 29th May, 1971. The present suit was filed on 20th August, 1970. Therefore, it was clearly within limitation. However, the said suit underwent rough weather. It was originally filed in the Court of Civil Judge Class II, Datia on the basis that the valuation for the purpose of jurisdiction of the Court would be Rs. 1800/- the consideration amount mentioned in the Sale Deed. In the first instance the said Court took the view that the suit was within its pecuniary jurisdiction. However, the High Court took a contrary view and held that the valuation of the suit should be equal to the market value of the property on the date of the suit and hence ordered return of the plaint for presentation to the proper Court and that is how the suit was filed in the District Court on 26th November,1975, after valuing the suit at Rs. 42,700/-. The contention of counsel for the contesting defendants is that the limitation for filing the suit will have to be seen from the date of filing of the second suit before the competent Court and if 26th November, 1975, being the date of filing of that is taken to be the date in the light of which limitation question is to be decided then the period of limitation of 12 years from the date of the Sale Deed dated 30th May 1959, must be treated to have expired and the suit was, therefore, beyond time. This contention was rightly not accepted by both the Courts below for the simple reason that originally the suit was filed within limitation but it was filed before a Court which was found to be lacking in pecuniary jurisdiction and when it was re-filed before a competent Court the plaintiffs were entitled to the benefit of Section 14 of the Limitation Act enabling them to get exclusion of the time from 20th August, 1970 to 22nd November, 1975, when the High Court took the view that the suit should be returned for presentation to the proper Court. It is obvious that the plaintiffs were prosecuting. in good faith their suit before a Court which, from defect of pecuniary jurisdiction, was unable to entertain it and if this period gets excluded the re-filed suit on 26th November, 1975, would remain within limitation of 12 Years from the date of the impugned Sale Deed. The plea of bar of limitation as raised by the learned counsel for the contesting defendants, therefore, stands rejected.

10. So far as the merits of the case are concerned certain salient facts which are well established

on record deserve to be noted. There is ample evidence on record to show that the suit house was the ancestral house of the plaintiff, and defendant No. 6. Evidence shows that originally the suit house was occupied by plaintiff's grandfather Mukundrao who had died 60 years prior to the filing of the suit. It is also revealed from the evidence that suit house was occupied by plaintiff, father defendant No. 6 and also by latter's uncle. They were staying together till defendant No.6's uncle died. Even the recital in the impugned Sale Deed to the effect that the Sale Deed was executed on account of family necessity indicated that the suit house was treated as joint property wherein obviously the plaintiffs would have interest. Both the Courts below have held that the suit house was an ancestral property in the hands of plaintiffs' father, defendant No. 6. This finding is well sustained on the record of the case and calls for no interference in this appeal. We, therefore reject the contention canvassed by learned counsel for the appellants that the suit house was self-acquired property of defendant No.6.

11. Once it is held that the suit house was an ancestral property in the hands of plaintiffs' father, defendant No. 6, the plaintiffs could naturally have right by birth in the suit house. However, the moot question is whether the alienation of the suit house by the impugned Sale Deed by the plaintiffs' father, defendant No.6 to the contesting defendants was binding on the plaintiffs. So far as this question is concerned it must be kept in view that plaintiffs' father was the 'karta' of the joint Hindu family. The evidence shows that at the relevant time he was working as Upper Division Clerk in the Civil Court at Chhatarpur. His monthly income was Rs. 150/- in 1958-59 when the Sale Deed was executed as seen from his deposition as D.W.1. He has clearly recited in the impugned Sale Deed in favour of the contesting defendants that he was selling the suit house for Rs. 1800/- on account of family necessity. He revealed in his deposition before the Court that he had a family of seven persons to be maintained out of his income of Rs. 150/- per month as he had got his wife, three sons, namely, the present plaintiffs and two young daughters. It is also revealed from his evidence that he was staying at Chhatarpur as he was serving as Upper Division Clerk in the Chhatarpur Court. The suit house was situated at village Datia. According to defendant No. 6 he occasionally came to Datia to look after the house. No attempt was made in his evidence to get out of the clear recitals in the Sale Deed that he had entered into the transaction for family necessity. It is also pertinent to note that out of the three plaintiffs, plaintiff No. 1 was major at the time of the Sale Deed. He has conspicuously remained absent from the witness box and avoided inconvenient cross-examination which he might have faced. In support of the plaintiffs only plaintiff 3 P. W. 1 Govind Rao who was admittedly aged 8 years at the time of the Sale Deed has been examined. He naturally could not have any personal knowledge about what transpired in 1959, when his father who was serving in a Civil Court as Upper Division Clerk thought it fit to sell the ancestral house in village Datia to the defendants and whether the recital made by him in the Sale Deed that the transaction was being executed for family necessity was right or not. Nor defendant No 6. vendor father of the plaintiffs, had even whispered about the necessity for inserting the recital in the Sale Deed that he was executing the same for family necessity. It has to be kept in view that defendant No 6 being the father of the plaintiff and 'karta' of the joint Hindu family was legally entitled to alienate the suit house and also the interest of the minor plaintiffs, in the said house even for his own requirements unless it was shown that the transaction was tainted by any immoral or illegal purpose. That is not the case of the plaintiffs. Nor have they suggested that their father was addicted to any immoral conduct. Their only case is that their father had no right to alienate their undivided interest in the suit house. We must keep in view the fact that defendant No. 6, father of the plaintiff was a worldly person who was presumed to know the ways of the world as he was attached to the Civil Court as Upper Division Clerk at the relevant time. His evidence

shows that upto 1954, he had worked in the Civil Court as a Lower Division Clerk. Then he was promoted by the High Court to the post of Upper Division Clerk in the year 1954, and he was transferred to Panna and from Panna he was transferred to Chhatarpur. He also deposed that he used to visit Datia in connection with supervision of' the suit house. Therefore, defendant No.6 father of the plaintiffs apart from being the 'karta' of the joint Hindu family was well versed in the ways of the world and was not a novice or a layman. With his open eyes he disposed of the suit house which appeared to be almost a ruin for Rs. 1800/-. It is easy to visualize that when defendant No. 6, the vendor was staying with his family at Chhatarpur and when the ancestral house at Datia village was in a ruinous condition and which would almost be a burden to them he thought it fit in his wisdom to dispose it of for Rs. 1800/ - in favour of the defendants and made an express recital in the Sale Deed that it was for family necessity that he was disposing it of. As a Hindu father and 'karta' of the family he had every right to do so and in the process could have legally disposed of the interest of his minor sons in the said property also for the benefit of the family and necessity of the family. The plaintiffs have not been able to lead any cogent evidence to rebut the clear recitals found in the Sale Deed to that effect. We may usefully remind ourselves of what Mulla's Hindu Law 16th Edition by S. T. Desai has to state in connection with 'alienation by father' at paragraph 256 of the said volume. It reads as under :

"256. Alienation by father :- A Hindu father as such has special powers of alienating coparcenary property which no other coparcener has. In the exercise of these powers -

(1) he may make a gift of ancestral movable property to the extent mentioned in paragraph 225, and even of ancestral immovable property to the extent mentioned in paragraph 226;

(2) he may sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt and was not incurred for immoral or illegal purposes (paragraph 295).

Except as aforesaid, a father has no greater power over coparcenary property than any other manager (o), that is to say, he cannot alienate coparcenary property except for legal necessity or for the benefit of' the family, (paragraph 242). This section must be read with what is stated under paragraphs 213-215 ante."

Shri Khanduja, learned counsel appearing for the respondent-plaintiffs in this connection submitted that the defendants as alienees should have properly enquired as to why the transaction was being entered into by the father of the minor plaintiffs in their favour. It is difficult to appreciate this submission. The evidence on record clearly shows that contesting defendants before entering into the suit transaction had taken all permissible precautions and made enquiries in this connection. Contesting Defendants witness No. 1 Tehalram stated in his evidence that he was informed by defendant No. 6, that his uncle had expired. His debt has to be paid off. Moneylenders had also to

be paid. That he tried to verify these facts. That he went to the shop of Chetandas in the area. He also enquired from grocer Meghamal and found out that defendant No. 6 was in debts and, therefore, he came to the conclusion that defendant No. 6 was in need of money and accordingly he had sold his house to him. Shri Khanduja learned counsel appearing for the plaintiffs submitted that defendant No. 1 in his cross-examination stated that defendant No.6 Hanumantrao had no title to the property and in order to help him he had purchased the house from him. It is difficult to appreciate this contention. The evidence of defendant No. 1 when read in its correct perspective showed that he was informed by one Ganpati that the property belonged to King and the King of Datia had given it to the ancestor of the plaintiffs Mukundrao to stay therein and accordingly he thought that defendant No.6 would not be having title to the property. It must be kept in view that plaintiffs' ancestor Mukundrao had died 60 years prior to the suit. Therefore, even if originally the property might have belonged to the King it was being occupied by plaintiffs' ancestor Mukundrao and his descendants since generation, as owners thereof and even by doctrine of adverse possession they would have perfected their title. It may also be kept in view that there was nothing on the record to suggest that the King of Datia had ever attempted to put forward any claim of ownership over the suit property. Even that apart it was not the case of the plaintiffs themselves that the suit property did not belong to their father or their ancestors. On the contrary their case is that the suit house did belong to their father jointly with them. Therefore. it is too late in the day for the learned counsel for the plaintiffs to submit that suit house did not belong to the plaintiffs and their father or that at the time of the sale plaintiffs' father had no right, title or interest in the suit house. In our view the evidence on record clearly establishes that the defendants made all permissible efforts to find out the legal necessity which prompted defendant No. 6 to enter into the said transaction in their favour. It is of course true as contended by Shri Khanduja for the plaintiffs, that the efforts made by the contesting defendants by relying upon the evidence of Meghamal P.W.2 who is said to have sold grocery on credit to defendant No. 6 at the relevant time remained unsuccessful as there would have been no occasion for defendant No. 6 who was staying with his family at Chhatarpur to purchase at Datia grocery items on a continuous basis on credit from witness Meghamal. But even leaving aside the evidence of witness Meghamal which was not accepted by Courts below we find that the evidence of the plaintiffs and defendant No. 6 clearly establishes that the suit house which was in a dilapidated and ruinous condition at Datia was found to be a dead burden to the family and, therefore, for family necessity it was disposed of by defendant No.6 father of the plaintiffs in 1959. The said transaction, therefore, as the recitals in the Sale Deed themselves rightly showed, in the light of surrounding circumstances was a transaction for the benefit of the family. The said conclusion of ours gets further fortified from the well established facts on record that after purchasing the suit house the contesting defendants re-constructed it to a substantial extent by spending an amount of Rs. 33,000/- as held by a Division Bench of the High Court especially when the suit house was purchased for an amount of Rs. 1800/-. That shows that it must be in a totally dilapidated condition and the defendants appear to have purchased only the site on which they put a substantially new construction at a huge cost of Rs. 33,000/- as compared to the original purchase price of Rs. 1800/-. The very fact that defendant No. 6 who was presumed to be well acclimatized with the Court proceedings as he was an Upper Division Clerk in the Civil Court at Chhatarpur at the relevant time stood by the transaction and the recitals in the Sale Deed for eleven and a half years and the further fact that he saw to it that his sons challenged the transaction after such a long period of time when defendants in the meantime went on spending huge amounts on the property and ultimately came forward in the suit to support the plaintiffs, leave no room for doubt that the suit was got filed by defendant No. 6 only with a view to knock out more money from the contesting defendants and was clearly a collusive suit. On an overall consideration of evidence on record, therefore, we find ourselves unable to endorse the conclusions reached by both the Courts

below that the suit transaction was not binding on the plaintiffs. The said finding is against the weight of evidence and cannot be sustained. We, therefore, hold that the plaintiffs had made out no case for getting any relief from the Court in the present proceedings and their suit was, therefore, liable to be dismissed. Accordingly this appeal succeeds and is allowed. The judgment and decree passed by the trial Court and as confirmed with modification by the High Court are quashed and set aside. Plaintiffs' suit will stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs all throughout.

12. Before parting with the present proceedings, however, we may mention that, as noted earlier, appellant No. 1 on his own behalf and on behalf of appellant No. 2 has given a written undertaking to this Court to pay ex gratia Rs. 2,00,000/- to the plaintiff-respondents. We also permit the remaining contesting defendants to file similar written undertakings within one week from today. These undertakings will stand accepted and accordingly while allowing the appeal of the contesting defendants, we direct the appellant-defendants to ex gratia pay sum of Rs. 2,00,000/- to the respondent -plaintiffs within three months from today. The said amount be deposited by the appellants in the trial Court within that time. The deposited amount of Rs. 2,00,000/- will be permitted to be withdrawn by the plaintiffs from the trial Court on due identification. Order accordingly.

Order accordingly.