

Ashok and Others Vs. Gajanan and Others

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Court : Mumbai Nagpur

Decided On : Jun-10-2016

Judge : R.K. Deshpande

Appeal No. : Second Appeal No. 253 of 2000

Appellant : Ashok and Others

Respondent : Gajanan and Others

Judgement :

Oral Judgment:

1. In Regular Civil Suit No.691 of 1993 the trial Court has passed a decree on 05.12.1996 granting a declaration that the defendant No.3 - Venutai was the owner of only 4 acres of land, and therefore, she had no right to transfer the land more than that to the defendant Nos.1 and 2 out of field Survey No.85. The trial Court further grants a declaration that the defendants No.1 and 2 are not having the title or interest in the land more than 4 acres from field Survey No.85. The defendants are restrained from disturbing the possession of the plaintiffs over the suit field.

2. In Regular Civil Appeal No.254 of 1996 the lower Appellate Court has set aside the decree passed by the trial Court on 13.10.2000 and the Regular Civil Suit No.691 of 1993 has been dismissed. The plaintiffs are therefore, before this Court challenging the judgment and order passed by the lower Appellate Court and

seeking restoration of the decree passed by the trial Court.

3. On 20.11.2000 this Court admitted the matter on the substantial questions of law framed in ground No.3 and 8 of the memo of appeal, which are reproduced below:

"(1) ...

(2) ...

(3) Whether the Lower Appellate Court failed to take into consideration that, so far as the suit field is concerned, in view of the admitted position that, it was purchased by 2 separate Sale Deeds dated 6.4.1965 to the extent of 12 Acres 35 Gunthas and the defendants purchased only 4 acres of land out of the said suit field? It is thus clear that, the said acquisition of the property is not by the Joint Hindu Family and it was purchased by 2 separate individuals and as a consequence thereof, the defendant No.3 had only right, title or interest to the extent of 4 acres and she could not have alienated 5 acres 33 Gunthas of land in favour of the defendant Nos.1 and 2.

(4) ...

(5) ...

(6) ...

(7) ...

(8) Whether the Lower Appellate Court failed to take into consideration basic principles of law that, the female member of the Joint Hindu Family had no right of alienation of specific portion of land and thus the defendants cannot claim any right to possess the land to the extent of 5 acres 33 Gunthas in addition to the land owned by their predecessor in title?"

4. After hearing the learned counsels appearing for the parties the aforesaid substantial questions of law are reframed as under:

[i] Whether the lower Appellate Court was right in holding that the land admeasuring 16 acres and 35 gunthas out of Survey No.85/2 situated at village Mahan, Tq. Barshitakli, Dist. Akola was the ancestral property in the hands of Putalsa the father of the plaintiffs and Venutai the defendant No.3 in Regular Civil Suit No.691 of 1998?

[ii] Whether the lower Appellate Court was right in setting aside the declaration granted by the trial Court that the defendant No.3 - Venutai was the owner of the land only to the extent of 4 acres out of field Survey No.85/2, and she had no authority to sale the land over and above 4 acres?

5. The undisputed position that can be gathered from the judgment and order delivered by the lower Appellate Court needs to be noticed. Survey No.85 consisted of total land of 22 Acres and 12 Gunthas. Sometime in the year 1985 there was a partition of the family property between Putalsa and Ambadas the two brothers on the one hand and Sunderabai, the widow of Sonasa the third brother; on the other hand. Sunderabai got her share of 5 acres and 32 gunthas of land out of Survey No.85, which was renumbered as Survey No.85/1, whereas Putalsa and Ambadas together were given remaining land of 16 acres and 35 gunthas out of field Survey No.85, which was renumbered as Survey No.85/2. The shares of Putalsa and Ambadas in the suit field, were sold in Court auction in execution of decree against them in Regular Civil Suit No.149 of 1960. One Narayan purchased this property in auction and the sale certificate at Exhibit-73 dated 29.11.1960 is placed on record. Narayan sold this property to one Atmaram by registered sale-deed dated 10.12.1960 at Exhibit-75. Thus, Atmaram became the owner of land Survey No.85/2 admeasuring total 16 acres and 35 gunthas.

6. Putalsa, the father of the plaintiffs purchased land admeasuring 12 acres and 35 gunthas out of Survey No.85/2 by registered sale-deed dated 06.04.1965 at Exhibit-72 from Atmaram. The defendant No.3 - Venutai purchased 4 acres of land out of Survey No.85/2 on the very same day i.e. 06.04.1965 vide Exhibit-202 from Atmaram. Thus, there are two separate sale-deeds at Exhibit-72 and Exhibit-202 in the name of Putalsa and Venutai respectively.

7. The defendant No.3 - Venutai sold land admeasuring 3 acres out of Survey No.85/2 to the defendant No.2 Gajanan s/o Deorao Mhaisane by registered sale-deed dated 16.04.1982 at Exhibit-135. She also sold 2 acres and 35 gunthas of land out of Survey No.85/2 to the defendant No.2 Digambar s/o Awadhut Mhaisane on 16.04.1982 at Exhibit-136. Thus, the defendant Nos.1 and 2 are claiming ownership over 5 acres and 33 guntahs of land out of Survey No.85/2 and they were trying to disturb the possession of the plaintiffs over 1 acre and 33 gunthas of land, and therefore, the present civil suit was filed by the plaintiffs.

8. I need not go into the aspect of dispute as to whether prior to 1960 the suit property i.e. Survey No.85/2 admeasuring 16 acres and 35 gunthas was the ancestral joint family property of the Putalsa and the defendant No.3 - Venutai. Assuming that it was an ancestral and joint family property in their hands, it was sold to clear the family debts, in execution of the decree passed in Regular Civil Suit No.149 of 1960 on 22.01.1960 and the sale certificate was issued in the name of Narayan in respect of this entire property on 29.11.1960 at Exhibit-73 on the record. This property has changed the hands by virtue of registered sale-deed dated 10.12.1960 at Exhibit-75 when one Atmaram purchased it from Narayan (the auction purchaser). Putalsa the father of the plaintiffs and the defendant No.3 - Venutai have purchased the different portion of this property by registered sale-deeds dated 06.04.1965 at Exhibit-72 and Exhibit-202. The property, though initially had a status of an ancestral property in the hands of Putalsa and Venutai prior to the year 1960, it lost its character as an ancestral property, once it was sold in public auction to clear the family debts. It cannot therefore, be said that the acquisition of the same property either by Putalsa or by the defendant No.3 - Venutai re-assumes the character of an ancestral property upon re-purchase on 06.04.1965. The property remains in their hand as their self-acquired property by virtue of sale-deeds at Exhibit 72 and 202. The substantial questions of law at Sr. No.[i] is answered accordingly.

9. Except relying upon some mutation entries, there is nothing on record to show that either, there existed a joint family of Putalsa and Venutai, in the year 1965 when the property was repurchased or that there existed any joint family property in their hands. It is not the case of any of the parties that the property was

purchased out of the nucleus of the joint family funds. In the absence of there being any evidence either of existence of the joint family or of the joint family property, the lower Appellate Court has committed an error in reversing the finding of the trial Court that the properties were self-acquired property of Putalsa and Venutai. Once the finding of the lower Appellate Court about ancestral nature of property ceases to exist, the question of defendant No.3 Venutai becoming owner of the land of more than 4 acres out of Survey No.85/2 does not at all arise. The defendant Nos.1 and 2, who are the purchasers of the land admeasuring 4 acres from the defendant No.3 - Venutai on the basis of the registered sale-deeds at Exhibit-135 and 136 cannot claim ownership over and above 4 acres of land out of Survey No.85/2. The lower Appellate Court committed an error in reversing the finding of the trial Court on that aspect of the matter. The substantial questions of law at Sr. No.[ii] is answered accordingly.

10. In view of above, the second appeal is allowed.

The judgment and order dated 13.10.2000 passed by the Second Additional District Judge, Akola in Regular Civil Appeal No.254 of 1996, is hereby quashed and set aside and the judgment and decree passed by the trial Court in Regular Civil Suit 691 of 1993, is hereby restored. No order as to costs.

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