

Sakharam Sheku Shinde Vs. Shiva Deorao Jamale

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Court : Mumbai

Decided On : Jul-25-1973

Reported in : (1974)76BOMLR267

Judge : Apte, J.

Appeal No. : Second Appeal No. 345 of 1966

Appellant : Sakharam Sheku Shinde

Respondent : Shiva Deorao Jamale

Disposition : Appeal allowed

Judgement :

Apte, J.

1. This is an appeal by original defendant No. 1 which arises in a suit filed by respondents Nos. 1, 2 and 5 against the present appellant and respondents Nos. 3 and 4 for a declaration that the sale-deed executed jointly by respondents Nos. 3 and 4 and Maruti, the uncle of respondent No. 3, was not binding on the 1/5th share of each of the three plaintiffs and for the consequential relief of possession of their share.

2. Respondent No. 2 is the wife of respondent No. 3 and respondents Nos. 1, 4 and 5 are their sons. These five respondents along with Maruti, the uncle of

respondent No. 3, formed a joint Hindu family. The suit property belonged to this joint family. On September 30, 1957, respondent No. 3, the father, along with his eldest son Bhimrao, respondent No. 4, and his uncle Maruti executed a deed of sale in respect of this property in favour of the appellant. It is not in dispute that at the time this sale-deed was executed, respondent No. 1 Shiva and his another brother Hari respondent No. 5 were minors. These two respondents along with their mother Prayagbai, respondent No. 2, instituted the present suit challenging the above alienation on several grounds such as that it was obtained by fraud and undue influence, that it was without consideration and was not for legal necessity. For these reasons it was stated that the same was not binding on the 1/5th share of each, of the three plaintiffs.

3. Defendant No. 1 alone resisted plaintiffs' claim denying that he obtained the sale-deed by practising fraud or undue influence. He also denied that the sale was without consideration or that it was without legal necessity. He maintained that he had paid full consideration mentioned in the sale-deed and that the sale-deed was¹ executed by the three executants for legal necessity, namely for the maintenance of the family and to defray antecedent debts. A contention was also raised that out of the suit property, an area of 1 acre 39 gunthas was the self-acquired property of defendant No. 2 and therefore he had a right to dispose it off and plaintiffs had no interest, therein. But this contention has been negatived by both the lower Courts. It was further contended that Maruti Balwant, the uncle of defendant No. 2. had 1/2 share in the suit property and since he was a party to the sale-deed, the sale-deed was binding on his 1/2 share. A further contention was raised that the suit was not tenable in view of the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act.

4. The trial Court upheld the contentions raised by defendant No. 1 and, in particular, it found that the sale was for legal necessity and for the benefit of the family. Consequently that Court dismissed plaintiffs' suit in toto.

5. In appeal by the plaintiffs, the appellate Court also confirmed all the findings recorded by the trial Court. But it appears that a new point was argued before the appellate Court, namely, that under Section 8 of the Hindu Minority and

Guardianship Act, 1956, previous permission of the District Court was necessary to alienate the undivided interest of the two minor plaintiffs but since admittedly no such permission was obtained, the sale was voidable under Sub-section (3) of that section at the instance of the minor. This contention was upheld by the lower appellate Court and it held that the sale was not binding on the 1/5th share of plaintiffs Nos. 1 and 2. Consequently that Court decreed the claim of plaintiffs Nos. 1 and 2 and awarded a decree for partition and possession of their share. Therefore, defendant No. 1 has come in appeal.

6. Mr. Abhyankar, the learned advocate for the appellant, argued that the lower appellate Court was in error in holding that Section 8 of the Hindu Minority and Guardianship Act governed this case. It was submitted by him that so far as undivided interest of a minor in the joint Hindu family is concerned, the Act is not applicable. This contention is well founded and must be accepted.

7. Section 8(2), no doubt, provides that the natural guardian of a Hindu minor shall not, without the permission of the Court, in any way transfer any part of the immovable property of the minor. Had this provision stood alone, perhaps the view taken by the learned Judge was right. But we have also to take into account the other provisions in the Act. It is a well settled principle that every statute must be construed *ex visceribus actus* i.e. within the four corners of the Act. When construing the terms of any provision found in a statute, the Court is bound to consider other parts of the statute which throw light on the intention of the Legislature and serve to show that the particular provision ought not to be construed as it would be if it stood alone and apart from the rest of the statute. Every clause of a statute must be construed with reference to the context of other clauses in the statute so as to make, as far as possible, a consistent enactment of the whole statute. No part of a statute can be construed in isolation, because the intention of makers of law is to, be found not in one part of the statute or another but in the entire enactment and that intention can best be gathered by viewing a particular part of the statute not in detachment from its context in the statute but in conjunction with its other provisions.

8. Now, coming to the provisions of the Hindu Minority and Guardianship Act, Section 4(6) defines 'guardian' while Clause (c) thereof defines 'natural guardian' as meaning- any of the persons mentioned in Section 6. Now, Section 6 deals with natural guardians of a Hindu minor. It mentions in the order of priority the persons who are entitled to be natural guardians of a Hindu minor. The opening words of the section, however, say that 'the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property)' are those mentioned below in the section. The words 'excluding his or her undivided interest in joint family property' which have been put in brackets make it clear that undivided interest of a Hindu minor is excluded from the operation of the provisions of the Act and the subject-matter with which the Act deals is limited to guardians in respect of minor's person or in respect of minor's property other than his undivided interest in joint family property, whether they be natural guardians or testamentary guardians or guardians appointed or declared by Court. The concept of a guardian in respect of undivided interest in the joint family property is thus specifically excluded from the purview of the Act. The powers which a Hindu father therefore has, as a natural guardian of his minor sons under Hindu Law, are kept intact and are not in any way affected by the provisions of the Hindu Minority and Guardianship Act so far as the undivided interest of a Hindu minor in the joint family property is concerned.

9. The restrictions contained in Section 8, therefore, do not apply in respect of the undivided interest of a minor in joint family property and consequently Section 8 does not debar the manager or karta of a joint Hindu family from alienating joint family property including the interest of minor without obtaining the previous permission of the Court, even if the manager or karta happens to be the natural guardian in respect of the separate property of any one or more of the minor coparceners. Of course, the alienation would have to be justified under Hindu law but Section 8 does not require that any previous permission of the Court should be obtained before effecting such alienation. Under Hindu law a manager and karta of a joint Hindu family can alienate joint family property so as to bind the interest of minor coparceners in such property provided the alienation is either for legal necessity or for the benefit of the estate. If the manager and karta happens to be the father, he has certain additional powers of alienation under Hindu law and in

exercise of those powers he can alienate joint family property so as to bind the interest of his minor coparceners in such property. These powers are not at all curtailed or affected in any way by the provisions of the Hindu Minority and Guardianship Act.

10. The view taken by the learned District Judge is, therefore, obviously incorrect in view of the provisions of Section 6 referred to above. It appears that the learned Judge has totally lost sight of this important provision contained in the Act. That being so, the decree passed by the lower appellate Court cannot be sustained.

11. The appeal is allowed, the decree passed by the lower appellate Court is set aside and that passed by the trial Court on April 24, 1964, is restored. The plaintiffs to pay the costs of defendant No. 1 throughout and bear their own. The rest of the respondents to bear their costs throughout.

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