

A HIRABAI (D) THR. L.RS. & ORS.

v.

RAMNIWAS BANSILAL LAKHOTIYA (D) BY L.RS. & ORS  
(Civil Appeal No.4282 of 2019)

APRIL 25, 2019

B [ABHAY MANOHAR SAPRE AND  
DINESH MAHESHWARI, JJ.]

*Suit – Collusive suit to avoid execution of decree – Defendant No.3/respondent No.3 sold the suit property to one ‘B’ by registered sale deed dated 07.10.1965 – On death of ‘B’, defendant No.1 & 2/respondent Nos. 1 & 2 inherited the suit property – Some dispute arose between defendant no.3 and defendant nos. 1 & 2 – Thereafter, defendant No.1 & 2 filed suit against defendant No.3 for declaration of title over the suit property – Trial Court by judgment/decree dated 31.01.1975 held that defendant Nos.1 & 2 were the owners of suit property – This decree attained finality – Thereafter, two plaintiffs (sisters of defendant No.3) filed a suit against defendant No.1 & 2 for declaration that decree dated 31.01.1975 and sale deed dated 07.10.1965 were not binding on both the plaintiffs – Suit dismissed by the Trial Court – First appeal and second appeal were also dismissed by the First Appellate Court and the High Court respectively – On appeal, held: All three Courts were right in their reasoning and conclusion – It was a collusive suit filed at the behest of defendant No.3 through his two sisters and family members to avoid execution of a valid decree dated 31.01.1975 – The sale of the suit property was made by the Karta-defendant No.3 for legal necessity and benefit of the family, the same was binding on all the members of the family including the plaintiffs – Thus, the findings were recorded on proper appreciation of facts and law and hence no interference required.*

**Dismissing the appeal, the Court**

G **HELD: 1. According to this Court, all the three Courts (Civil Judge, first Appellate Court and the High Court) were right in their reasoning and the conclusion on all the factual and legal issues raised by defendant Nos.1 and 2 and there is no ground to differ with their reasoning and the conclusion. [Para 19]**  
H **[1056-F-G]**

2. First, the findings impugned in the appeal being concurrent in nature, were not only binding on the High Court while deciding the second appeal and were rightly held to be so binding but such findings are binding on this Court too; Second, even otherwise, all the findings have been recorded on proper appreciation of facts and law and hence do not call for any interference in this appeal as detailed *infra*. [Para 20] [1056-G-H; 1057-A]

3. Third, the suit in question was apparently a collusive suit filed at the behest of defendant No.3 through his two sisters and family members to avoid execution of a valid decree dated 31.01.1975 passed by the competent Civil Court against defendant No.3 in relation to the suit property. Fourth, in the light of findings recorded by the Trial Court in the previous suit, the present suit was rightly dismissed by all the Courts below. [Paras 21 and 22][1057-B-C]

4. Fifth, once it was held that the sale of the suit property was made by the Karta- defendant No.3 and it was made for legal necessity and the benefit of the family, the same was binding on all the members of the family including the plaintiffs.[Para 25]

5. Sixth, the plaintiffs failed to plead and prove that the sale in question was not for the benefit of family or that there was no legal necessity for such sale or as to on what basis, they claimed share in the suit property. On the other hand, defendant Nos.1 and 2 were able to prove that the sale was for the legal necessity and benefit of the family. [Para 25][1057-G-H]

6. Seventh, the plaintiffs themselves admitted in their evidence that they filed a civil suit at the instigation of defendant No.3-their real brother. This clearly indicates that the suit was not filed for a *bona fide* cause but it was a collusive suit filed by the plaintiffs to overcome the valid decree obtained by the defendant Nos.1 and 2 against defendant No.3 and to save defendant No.3 from its execution. [Para 26][1058-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.4282 of 2019

From the Judgment and Order dated 19.12.2008 of the High Court of Judicature at Bombay, Bench at Aurangabad in Second Appeal No. 177 of 1988.

A Vinay Navare, Sr. Adv., Sudhanshu S. Choudhari, M. K. Deshpande, Ms. Surabhi Guleria, Yogesh S. Kolte, Ms. Nandini Singla, Advs. for the Appellants.

Nishant Ramakantrao Katneshwarkar, Adv. for the Respondents.

B The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

C 2. This appeal is filed against the final judgment and order dated 19.12.2008 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Second Appeal No.177 of 1988 whereby the High Court dismissed the second appeal filed by the appellants herein and upheld the judgment of the Trial Court and first Appellate Court.

3. A few facts need mention hereinbelow for the disposal of this appeal.

D 4. This appeal is filed by the legal representatives of two original plaintiffs, who died after filing of the civil suit.

5. The original two plaintiffs were the real sisters of defendant No.3 (respondent No.3 herein - Shankarlal) and their father was late Motilal.

E 6. There is a building named “Moti Building” in the city of Jalna, which consists of four houses, each bearing separate number, viz., 3484/3534, 3485/3535, 3486/3536 and 3487/3537 (hereinafter referred to as “the suit property”).

F 7. Defendant No.3/respondent No.3 sold the suit property to one Bansilal Shivilal by a registered sale deed dated 07.10.1965. On the death of Bansilal, defendant Nos.1 and 2/respondent Nos.1 and 2 herein inherited the suit property as heirs of Bansilal and thus became the owners of the suit property.

G 8. Since some dispute arose between defendant Nos.1 and 2 with defendant No.3 in relation to the suit property, defendant Nos.1 and 2/respondent Nos.1 and 2 herein filed a civil suit in the year 1971, being CS No.48/1971 against defendant No.3/respondent No.3 Shankarlal and others (tenants in the suit property). The suit was for a declaration of title over the suit property and for permanent injunction in relation to the suit property. The suit was contested by defendant No.3.

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9. By judgment/decreed dated 31.01.1975, the civil suit (No.48/1971) was decreed in favour of defendant Nos.1 and 2/respondent Nos.1 and 2. The Trial Court *inter alia* held that defendant Nos.1 and 2 are the owners of the suit property. This decree attained finality. A

10. Thereafter, a civil suit, out of which this appeal arises, was filed against the defendants (respondents herein). The suit was for a declaration that the decree dated 31.01.1975 passed in Civil Suit No.48/1971 is not binding on the two plaintiffs and that the sale deed dated 07.10.1965 executed by defendant No.3/respondent No.3 in favour of defendant Nos.1 and 2/respondent Nos. 1 and 2 in relation to the suit property is also not binding on the two plaintiffs. B

11. The suit was founded *inter alia* on the allegations that the suit property was an ancestral property of the family in which the two plaintiffs - who are the sisters of defendant No.3/respondent No.3 have an equal share along with defendant No.3. The plaintiffs alleged that since the suit property was sold by defendant No.3/respondent No.3 without their knowledge, authority and consent, the sale deed dated 07.10.1965 is null and void to the extent of plaintiffs' share. The plaintiffs also alleged that since both the plaintiffs were not parties to Civil Suit No.48/1971, the decree dated 31.01.1975 passed in the said suit is neither binding on them nor such decree affects their right, title and interest in the suit property. C

12. During pendency of the civil suit, wife, sons and daughters of defendant No.3/respondent No.3 also joined the civil suit, either as plaintiffs or as defendants, some since inception and others at a later stage. Defendant No.3, his wife, sons and daughters supported the plaintiffs' case. D

13. The suit was contested only by defendant Nos.1 and 2, who were the purchasers of the suit property from defendant No.3. E

14. According to defendant Nos.1 and 2, first, the suit was barred by limitation because it was filed after three years from the date of decree dated 31.01.1975; Second, it was bad in law because the plaintiffs failed to seek partition in relation to the entire properties owned by the family; Third, it was a collusive suit filed at the instance of defendant No.3/respondent No.3 to avoid execution of the decree against him; Fourth, the decree dated 31.01.1975 passed in Civil Suit No.48/1971 F

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- A was also binding on the two plaintiffs in the light of categorical finding recorded by the Civil Court in its judgment dated 31.01.1975; Fifth, in any case, the two plaintiffs had no right, title and interest in the suit property; Sixth, even otherwise, the sale of the suit property having been made by a Karta of the family, i.e., defendant No.3 for the benefit of the family and for legal necessity, it is binding on the two plaintiffs including
- B all members of the family; Seventh, a suit to challenge the decree passed by a competent Civil Court is not maintainable.

15. The Trial Court, by judgment/decreed dated 16.10.1981, dismissed the suit and answered all the issues against the plaintiffs by upholding the objections raised by defendant Nos.1 and 2. The plaintiffs
- C felt aggrieved and filed first appeal before the 2<sup>nd</sup> Additional District Judge. By judgment dated 09.05.1988, the first Appellate Court dismissed the appeal which gave rise to filing of second appeal by the plaintiffs in the High Court. By impugned order, the High Court dismissed the second appeal, which has given rise to filing of the present appeal by way of
- D special leave by the plaintiffs in this Court.

16. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing plaintiffs' second appeal and thereby was justified in upholding the judgment of the Trial Court and first Appellate Court which resulted in dismissing the
- E suit.

17. Heard Mr. Vinay Navare, learned senior counsel for the appellants and Mr. Nishant Ramakantrao Katneshwarkar, learned counsel for the respondents.

18. Having heard the learned counsel for the parties and on perusal
- F of the record of the case, we find no merit in this appeal.

19. In our view, all the three Courts (Civil Judge, first Appellate Court and the High Court) were right in their reasoning and the conclusion on all the factual and legal issues raised by defendant Nos.1 and 2 and we find no good ground to differ with their reasoning and the conclusion.

- G 20. First, the findings impugned in the appeal being concurrent in nature, were not only binding on the High Court while deciding the second appeal and were rightly held to be so binding but such findings are binding on this Court too; Second, even otherwise, all the findings have been

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recorded on proper appreciation of facts and law and hence do not call A  
for any interference in this appeal as detailed *infra*.

21. Third, the suit in question was apparently a collusive suit filed  
at the behest of defendant No.3 through his two sisters and family  
members to avoid execution of a valid decree dated 31.01.1975 passed  
by the competent Civil Court against defendant No.3 in relation to the B  
suit property.

22. Fourth, in the light of findings recorded by the Trial Court in  
the previous suit in Para 18, the present suit was rightly dismissed by all  
the Courts below. It is apposite to quote the finding of the Trial Court  
recorded in Para 18 which reads as under: C

**“18. The sale deed has been executed by Shankarlal, who  
is admittedly the Karta of the family. According to the own  
statement of defendant No.1, he was in need of money for  
paying his dues to different persons. He, therefore, sold  
the house in favour of Bansilal. Defendant No.1 cannot D  
raise the objection that, other heirs of Motilal should be  
impleaded as defendants. It is for the other heirs, if any, of  
late Motilal to take recourse to proper remedy in case they  
fell that, the alienation of the suit house was not in the  
interest of the family. Other heirs of Motilal are not E  
necessary parties to this suit. Issue No.8 is decided against  
the defendants.”**

23. The aforesaid finding, in our view, not only binds defendant  
No.3 but also binds the two plaintiffs being the members of the same  
family.

24. Fifth, once it was held that the sale of the suit property was F  
made by the Karta - defendant No.3 and it was made for legal necessity  
and the benefit of the family, the same was binding on all the members  
of the family including the plaintiffs.

25. Sixth, the plaintiffs failed to plead and prove that the sale in G  
question was not for the benefit of family or that there was no legal  
necessity for such sale or as to on what basis, they claimed share in the  
suit property. On the other hand, defendant Nos.1 and 2 were able to  
prove that the sale was for the legal necessity and benefit of the family.

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A        26. Seventh, the plaintiffs themselves admitted in their evidence that they filed a civil suit at the instigation of defendant No.3 - their real brother. This clearly indicates that the suit was not filed for a *bona fide* cause but it was a collusive suit filed by the plaintiffs to overcome the valid decree obtained by the defendant Nos.1 and 2 against defendant No.3 and to save defendant No.3 from its execution.

B        27. In the light of the foregoing discussion/reasons, we find no good ground to interfere in the impugned order, which is based on proper appreciation of facts and law governing the issues.

C        28. The appeal, is therefore, found to be devoid of any merit. It is accordingly dismissed.

Ankit Gyan

Appeal dismissed.