Moreshar Yadaorao Mahajan vs Vyankatesh Sitaram Bhedi(D) Tr.Lrs. on 27 September, 2022

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Bench: C.T. Ravikumar, B.R. Gavai

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5755-5756 OF 2011

MORESHAR YADAORAO MAHAJAN ...APPELLANT(S)

VERSUS

VYANKATESH SITARAM BHEDI (D)
THR. LRS. AND OTHERS ...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. These appeals challenge the judgment dated 3rd July 2008 passed by the learned Single Judge of the High Court of Judicature at Bombay in Second Appeal No. 264 of 1996, thereby allowing the appeal filed by the respondents challenging the judgment dated 13th June 1996 passed by the 2nd Additional District Judge, Yavatmal (hereinafter referred to as the "Appellate Court") in Regular Civil Appeal No. 61 of 1990 vide which the Appellate Court confirmed the judgment dated 28th March 1990 passed by the Civil Judge (Senior Division), Yavatmal (hereinafter referred to as the "trial court") in Special Civil Suit No. 21 of 1985 filed by the appellant vide which the trial court had decreed the suit for specific performance filed by the present appellant.

2. The parties hereto are referred to in accordance with their status as before the trial court.

3. The plaintiff is a doctor who was working in a Government Hospital. The plaintiff was also in private practice. The plaintiff, for starting his private practice, took on rent a part of the house of the defendant. It is the case of the plaintiff that subsequently, the defendant was in financial need for his agricultural cultivation and household expenses and therefore, he suggested to the plaintiff that he should purchase the said part of the house which the plaintiff was occupying, together with an added portion. The plaintiff accepted the said suggestion and an agreement to sell was entered into on 24th July 1984. As per the terms of the said agreement to sell, the defendant agreed to sell and the plaintiff agreed to purchase the suit property for Rs.50,000/-. The plaintiff paid an amount of Rs.24,000/- on the date of the agreement and the defendant executed an earnest note in favour of

the plaintiff. As per the terms of the agreement to sell, the sale deed was to be executed before 31st March 1985. It is the case of the plaintiff that on 31st July 1984, the defendant again requested for money and on such request, the plaintiff paid him an amount of Rs.6,000/-. It is also the case of the plaintiff that pursuant to the aforesaid payment, he was put in possession of the suit property on 31st July 1984.

4. It is further the case of the plaintiff that he was always ready and willing to perform his part of the agreement and therefore, he informed the defendant by registered letter that he was willing to complete his part of the transaction before 31st March 1985. However, the defendant replied to the said notice by alleging that the transaction was of money lending and denied the execution of the sale deed. In this background, the plaintiff filed a suit for specific performance before the trial court. The trial court, vide judgment and decree dated 28th March 1990, decreed the suit and directed the defendant to execute the sale deed by accepting the balance sale consideration as per the terms of the agreement to sell. It further directed that if the defendant failed to execute the sale deed, the same should be executed through the court. Being aggrieved thereby, the defendant preferred an appeal before the Appellate Court which was also dismissed vide judgment dated 13th June 1996.

5. The defendant thereafter preferred a second appeal before the High Court which came to be partly allowed vide the impugned judgment. Though the High Court denied the specific performance, it directed the defendant to refund the amount of Rs.30,000/- along with an interest at the rate of 9% per annum from the date of the institution of the suit till its realization. Hence, the present appeal is at the instance of the plaintiff.

6. We have heard Shri Rahul Chitnis, learned counsel appearing on behalf of the appellant and Shri Harin P. Raval, learned Senior Counsel appearing on behalf of the respondents.

7. Shri Chitnis submitted that a perusal of the agreement to sell would reveal that the defendant had agreed to sell the property since he needed money for farming and household expenses. He submitted that the suit property exclusively belonged to the defendant and as such, the finding of the High Court that the suit property belonged to the joint family of the defendant i.e., his wife and three sons, is untenable. He submitted that, in any case, the sale deed was for meeting the legal necessities of the family and as such, the High Court ought not to have interfered with the concurrent findings of fact.

8. Shri Chitnis further submitted that the trial court had held that, after partition, the house had come to the share of the defendant. He submitted that both the trial court and the Appellate Court have concurrently held that the transaction in question was for the payment of antecedent debt and as such, it was not necessary to join other members of the family or other co-owners or other co-parceners as party defendants. He submitted that the concurrent findings ought not to have been interfered with by the High Court in second appeal. Relying on the judgment of this Court in the case of Kasturi v. Iyyamperumal and Others1, he submitted that it is only the parties to a contract who are necessary parties. He further submitted that since the contract was between the plaintiff and the defendant, it was not at all necessary to implead the defendant's wife or sons as party defendants. He therefore (2005) 6 SCC 733 submitted that the High Court has erred in taking this

aspect into consideration while partly allowing the second appeal.

9. Shri Raval, on the contrary, submitted that the suit property was a property jointly owned by the defendant, his wife and three sons. He therefore submitted that the suit itself was not maintainable on account of non-joinder of other owners of the suit property.

10. Shri Raval further submitted that the learned Single Judge of the High Court has rightly held that a mere agreement to alienate cannot be enforced against a son on the ground that the agreement was effected by the father for a consideration which was formed by his own antecedent debts. Shri Raval further submitted that a perusal of the plaint itself would reveal that the plaintiff himself has admitted that the suit property was owned by the defendant, his wife and three sons. The learned Senior Counsel submitted that in view of this admission, the suit filed by the plaintiff was itself not tenable. He further submitted that the Appellate Court, after having held that the trial court has erred in holding that the suit property was the exclusive property of the defendant but was in fact a joint property of the defendant, his wife and his three sons, has erred in dismissing the appeal filed by the defendant. He too relies on the judgment of this Court in the case of Kasturi (supra) to argue that it was not possible for the trial court to pass an effective decree in the absence of necessary parties. Relying on the judgment of this Court in the case of Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others2, he reiterated his submission that since the wife and sons of the defendant were necessary parties, in their absence, an effective decree could not have been passed. He also relies on the judgment of this Court in the case of Poonam v. State of Uttar Pradesh and Others3.

11. A perusal of the plaint would reveal that the plaintiff himself, in paragraph (2), has stated thus:

> "2. That the defendant and his sons viz. (i) Laxman; (ii) Vivek and (iii) Jayant together with defendant's wife Sou. Saralabai constitutes a joint Hindu family governed by Bombay School of Hindu Mitaksharia Law. (The defendant is the Karta of the family. The family inter-alia owns residential premises within the limits of at Wani....." (2010) 7 SCC 417 (2016) 2 SCC 779

12. The plaintiff has further averred in the plaint that in the month of July 1984, the defendant got into financial difficulties and that he had no money to carry on his large cultivation. The defendant also required money for his household expenses. It is further averred that besides this, the defendant also had to pay some debts as there was no prospect for the defendant to borrow money from the creditor.

13. It is the specific case of the defendant that initially, he had taken an amount of Rs.24,000/- and thereafter, Rs.6,000/- from the plaintiff by way of loan for his personal purposes. The defendant, in his written statement, has specifically stated that each of his sons are managing their own properties and the defendant was not required to look after their properties. The defendant has submitted that the other members of the family, i.e., his wife and sons had nothing to do with the amount borrowed by him from the plaintiff. The defendant has stated that the borrowed amount was spent by him for himself. The defendant has denied that the said transaction was binding upon other members of his

family. It is specifically averred by him that the said transaction was of money lending and the agreement was entered into only as a security towards the loan. The defendant has subsequently stated thus:

> "It is submitted that the defendant's sons and wife are necessary parties to this suit and their non-joinder is fettled to the suit. The suit is liable to be dismissed for non-joinder of necessary parties. It is denied that the defendant's sons must be deemed to have given their approval to the transactions. It is submitted that deeming is always fictions and no suit can be decreed on fictions."

14. It is to be noted that in spite of this specific objection, the plaintiff did not implead the defendant's wife and sons as party defendants.

15. Though the trial court framed the issue as to whether the suit was bad in law for non-joinder of necessary parties, it answered the same against the defendant by holding that the defendant was the absolute owner of the suit property and therefore, there was no question of joinder of his wife and three sons.

16. The Appellate Court, vide its judgment, held that the observation of the trial court that the suit property was the exclusive property of the defendant was not correct. It held that though the property was partitioned, the property remained as joint with the defendant, his wife and three sons. It further held that since the defendant represents the entire family and since the transaction in question was for payment of an antecedent debt, it was not necessary to join other members of the family or other co-owners or other co- parceners.

17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus:

> "15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

18. It could thus be seen that a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

19. As already discussed hereinabove, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the rights of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants. Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of Kasturi (supra) is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus:

> "7. .....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."

20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

21. In view of the plaintiff's own admission that the suit property was jointly owned by the defendant, his wife and three sons, no effective decree could have been passed in their absence.

22. In that view of the matter, we find that no error can be noticed in the judgment of the High Court. The appeals are therefore liable to be dismissed.

23. In any case, the High Court, in order to balance the equities, has partly decreed the suit and directed the defendant to refund an amount of Rs.30,000/- with an interest at the rate of 9% per annum from the date of institution of the suit till its realization. We affirm this direction of the High Court.

24. In the result, the appeals are dismissed. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J. [B.R. GAVAI] .....J. [C.T. RAVIKUMAR] NEW DELHI;

SEPTEMBER 27, 2022.