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RAMDAS

v.

SITABAI & ORS.

(Civil Appeal No. 6508 of 2005)

B

MAY 29, 2009

**[DR. MUKUNDAKAM SHARMA AND DR. B.S.
CHAUHAN, JJ.]**

Partition – Suit for partition and possession – Of four plots

- C – *Claiming half share – Defendant Co-sharer selling one plot, without consent of the plaintiff – Trial Court holding that the plaintiff was entitled to only $\frac{1}{4}$ share – First appellate court holding the plaintiff entitled to $\frac{1}{2}$ share – Declaring the sale as void, direction to purchaser to hand-over possession of the plot to the co-sharers – High Court in second appeal, modifying the decree holding that sale to the extent of share of the plaintiff void – Direction to purchaser to hand-over the possession of half share to the plaintiff – On appeal, held: Plaintiff was entitled to $\frac{1}{2}$ share in all 4 plots – The co-sharer could not have sold the property more than his share, nor could have delivered possession till the partition of the property – The Court even under equity cannot give the sold plot to the vendee and adjust the share of the co-sharers from the remaining three plots as the sold plot was extremely valuable – Transfer of property.*

- G – *Respondent No. 1 filed a suit seeking decree of partition against her brother defendant No. 1 in the property (4 plots) left behind by their father, claiming to be co-sharer to the extent of half share. It was contended that defendant No.1 had sold one plot in its entirety to defendant No. 3 (appellant) without her consent, and thus the sale was void and not binding on her. She also prayed for recovery of possession. Trial court passed a*

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decree holding that the plaintiff was entitled to $\frac{1}{4}$ share of the suit property and defendant No. 1 was entitled to $\frac{3}{4}$ share. A

In appeal, first appellate court held that the plaintiff was entitled to half share; that sale by defendant No. 1 in favour of defendant-appellant was not binding on her. Defendant-appellant was directed to hand over the possession of the purchased property to the co-sharers. B

Second appeal was filed by appellant. High Court disposed of the appeal by way of a consent decree whereby the decree by first appellate court was modified holding that the sale to the appellant was null and void and not binding on the plaintiff to the extent of half share in that plot. High Court further directed the appellant to hand over the possession of the plot to the plaintiff to the extent of her half share. Hence the present appeal. C D

Dismissing the appeal, the Court

HELD: 1. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. [Para 15] [1114-F-G] E

M.V.S. Manikayala Rao vs. M. Narasimhaswami and Ors. AIR 1966SC 470; Sidheshwar Mukherjee vs. Bhubneshwar Prasad Narain Singh and Ors. AIR 1953 SC 487, relied on. F

2. All the 4 plots of land which are the suit property were joint property and therefore, the plaintiff and defendant No. 1 owned and possessed half undivided share each in all the 4 properties. The defendant No.1 who is the brother of the plaintiff could not have therefore sold the piece of land in its entirety in favour of the G H

- A defendant-appellant, in as much as the aforesaid land was undivided and the plaintiff and defendant No. 1 were two co-sharers in the said property. High Court, therefore, was correct and legally justified in declaring the plaintiff as the owner and holder of half of the shares in all the
- B four properties which are undivided. The defendant No.1 being a co-sharer could not have sold by a registered sale deed more than his share nor could he have delivered possession till the said property is partitioned by the parties amicably or through the intervention of the
- C court. [Para 14] [1113-G-H; 1114-A-C]

3. It is settled law under the Transfer of Property Act, that a purchaser cannot have a better title than what his vender had. The possession which is claimed by the defendant-appellant in respect of the entire land was also

- D illegal and without proper sanction of law. So long as the property is joint and not-partitioned, the defendant-appellant is not entitled to get possession of the said land. Even otherwise, the appellant having purchased the land from defendant No.1 could be entitled to be declared
- E at the most to the extent of half share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land. [Para 14] [1114-C-F]

- F 4. The appellant having purchased only undivided share in the aforesaid property could not have purchased, owned and claimed for more than half share in the said property nor the appellant could have claimed possession in respect of the entire property. [Para 19] [1116-D-E]

- G 5. There is no reason to hold in favour of the appellant even on the ground of equity, as the appellant himself is responsible for his act in purchasing undivided share in a part of the suit property without the knowledge H and consent of the co-sharer. Besides, indisputably and

as held by the trial court, the land forming part of the sale deed is extremely valuable and, therefore, the question of equity does not arise as the court would be doing injustice to one having title and ownership if it accepts the prayer of the appellant. [Para 19] [1116-E-G]

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Case Law Reference:

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AIR 1966 SC 470	Relied on	Para 15
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AIR 1953 SC 487	Relied on	Para 16
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6508 of 2005.

C

From the Judgment & Order dated 8.4.2004 of the High Court of Judicature at Bombay, Bench at Nagpur in Second Appeal No. 359 of 2003.

D

Ashok Srivastava, Satyajit A. Desai, Anangha S. Desai, Venkateswara Rao Anumolu for the Appellants.

Subhash Paliwal, A.K. Sanghi for the Respondents.

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The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. This appeal arises out of a Judgment and Order passed by the High Court of Bombay, Nagpur Bench while disposing of a second appeal filed by the appellant herein (Mr. Ramdas) who has been arrayed as defendant No.3 in the original suit. The said suit was filed by the plaintiff –Sitabai (respondent No.1 herein) seeking for a decree of partition and for delivery of possession of her share in the suit property. It was alleged in the plaint that the deceased Sukha had a son, namely Sudam who was impleaded as defendant No.1 in the suit and a daughter (plaintiff-Sitabai). The plaintiff-Sitabai, therefore, is the sister of the defendant No.1-Sudam.

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2. Sukha died on 07.12.1977 and at the time of his death

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A he left behind him the following properties :

	Village	Survey No.	Area (H.R)=Acre
	Padoli	19	2.56 = = 6.40
B	Padoli	46	5.47 = = 13.50
	Lakhampur	22	4.40 = = 11.00
	Kosara	80	2.43 = = 6.08
C	Total		14.86 = = 37.15

The aforesaid properties which are four in number constitute the suit property.

D 3. In the said suit the plaintiff-Sitabai claimed to be a co-sharer to the extent of half share in the said suit property for the reason that the plaintiff-Sitabai and the defendant No.1-Sudam are the only legal heirs of deceased Sukha. It was contended by the plaintiff-Sitabai that the defendant no. 1-Sudam had sold Gat No. 19 area admeasuring 2.56HR of

E Mouza Padoli to defendant no. 3-Ramdas for a consideration of Rs. Rs.75,000/-. It was further stated in the plaint that the defendant No.1-Sudam had also executed a sale deed in favour of the defendant No.3-Ramdas on 19.03.1980 without the consent of the plaintiff-Sitabai. It was contended that the said

F sale deed is void and not binding on the plaintiff-Sitabai since the said transaction was done without the knowledge and consent of the plaintiff-Sitabai. It was further contended that the plaintiff-Sitabai is entitled for equal share i.e. $\frac{1}{2}$ shares in the suit property including Gat No. 19 and the defendant no. 1-G Sudam had no right and title to sale the same without the consent of the plaintiff-Sitabai. Therefore, the plaintiff-Sitabai prayed for a decree for partition and for recovery of possession.

4. The suit was contested by the defendants including

defendant No.3-Ramdas (the appellant herein). Defendant no. 3-Ramdas in his written statement admitted that he had purchased the aforesaid land from defendant no. 1-Sudam by registered sale deed dated 19.03.1980. However, it was stated that the defendant No. 1-Ramdas had informed him that he (i.e. defendant No. 1) is the exclusive owner of the aforesaid land. Defendant No. 3-Ramdas further stated that he had purchased the aforesaid land for valuable consideration and the plaintiff-Sitabai was aware of this transaction. He also stated that the aforesaid was a self-acquired property of the defendant No.1 and therefore the same was not open for partition.

5. On the basis of the pleadings of the parties, 13 issues were framed and all the parties led their evidence. The trial court recorded the evidence and heard the parties. The trial court after going through the evidence on record held that the aforesaid four properties were the self-acquired properties of Sukha. The trial court also found that it is an admitted fact that price of Gat No.19 is very high. Consequently, it was ordered that the share of the plaintiff could very well be adjusted from the land bearing Gat No.46 of Mauza Padoli and in case if her share is not satisfied then the plaintiff can very well settle her share from the consideration received from the defendant no. 3-Ramdas. A decree was passed by the trial court holding that the plaintiff is entitled for $\frac{1}{4}$ shares of the suit property and that the defendant No.1 is entitled for $\frac{3}{4}$ shares in the suit property.

6. Aggrieved by the said decision of the trial court, the plaintiff (respondent no. 1 herein) filed an appeal before the Court of Additional District Judge.

7. The Additional District Judge heard the appeal and by judgment and order set aside the judgment of the trial court and declared that the plaintiff is entitled to half share in the suit property consisting of 4 plots as mentioned hereinbefore. It was further held that the sale deed executed by the defendant No.1-Sudam in favour of the defendant No.3-Ramdas is not binding on the plaintiff-Sitabai. The defendant No.3-Ramdas was further

A directed to hand over the possession of the land bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli purchased by him to the legal heirs of the defendant No.2.

B 8. Being aggrieved by the aforesaid decision of the first appellate court, a second appeal was filed in the Nagpur Bench of the Bombay High Court. In the said second appeal, after hearing the counsel appearing for the respective parties the High Court disposed of the appeal by way of a consent decree wherein the judgment and decree of the ADJ was modified to the extent that one half share of the property already sold by defendant No. 1-Sudam to defendant No. 3 and the one half share of the plaintiff-Sitabai could be left intact. In terms of the aforesaid consent decree, the High Court modified the judgment and decree passed by the ADJ in the following manner :-

C D "It is hereby declared that the Sale-Deed executed by deceased Defendant No.1 Sukha in favour of Defendant No.3 Ramdas in Null and void and not binding on plaintiff to the extent of her one-half share in Gat No.19, and it shall be valid and binding upon present Respondent Nos. 2 and 3, in so far as one-half share of Sukha sold on 19th March, 1980 by him to the present Appellant."

E F 9. In terms of the aforesaid judgment and order of the High Court, a direction was issued to the defendant No.3-Ramdas to hand over possession of the property bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli to plaintiff-Sitabai to the extent of her one half share thereof. The High Court also observed that the plaintiff-Sitabai is at liberty to initiate appropriate proceedings for delivery of possession. With the G aforesaid modification the second appeal was partly allowed.

H 10. The defendant No.3-Ramdas (appellant herein) still being aggrieved by the aforesaid judgment and decree passed by the High Court filed the present appeal which was admitted and this Court issued notice in the matter.

11. We have heard the learned counsel appearing for the parties who have taken us through the records of the case in support of their rival submissions. Contentions of the counsel for the appellant was that the defendant no. 1-Sudam had sold Gat No. 19 area admeasuring 2.56H of Mouza Padoli to him (appellant herein) for a consideration of Rs. Rs.75,000/-. It was contended that the aforesaid property belonged to defendant No.1-Sudam exclusively and the said property was sold to them (appellant herein) by a registered sale deed dated 19.3.1980. So, the plaintiff-Sitabai is not entitled for any relief with respect to the aforesaid property.

12. It was also submitted that it being an admitted position that the appellant herein had purchased the entire land bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli, the plaintiff-Sitabai is not entitled to any decree for partition in respect of the said property. Another submission for the counsel appearing the appellants was that at least on the ground of equities the appellant is entitled to be declared as owner as being in possession of the property in question i.e. Gat No. 19 area admeasuring 2.56H of Mouza Padoli and the plaintiff-Sitabai's claim with regard to the half share in all four plots may be adjusted in the remaining three properties.

13. We have considered the aforesaid contentions in the light of the relevant records. All the four properties which constitute the suit property belonged to Sukha who was the absolute owner of the said four property. After the death of Sukha, all the aforesaid four property was jointly owned and possessed by the plaintiff-Sitabai and defendant No.1-Sudam as the natural heirs and legal representatives of the deceased Sukha.

14. It could not also be disputed that all the aforesaid 4 plots of land which are the suit property were joint property and therefore, the plaintiff-Sitabai and defendant No. 1-Sudam owned and possessed half undivided share each in all the 4 properties. The defendant No.1-Sudam who is the brother of

- A the plaintiff-Sitabai could not have therefore sold the entire Gat No. 19 area admeasuring 2.56H of Mouza Padoli in favour of the defendant No. 3-Ramdas (appellant herein) in as much as the aforesaid land was undivided and the plaintiff-Sitabai and defendant No. 1-Sudam were two co-sharers in the said property.
- B In that view of the matter, the High Court was correct and legally justified in declaring the plaintiff-Sitabai as the owner and holder of half of the shares in all the four aforesaid properties which are undivided. The defendant No.1-Sudam being a co-sharer could not have sold by a registered sale deed more than his share nor could he have delivered possession till the said property is partitioned by the parties amicably or through the intervention of the Court according to their share. It is settled law under the Transfer of Property Act, that a purchaser cannot have a better title than what his vender had.
- D The possession which is claimed by the defendant No. 3-Ramdas (appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not-partitioned, the defendant no. 3-Ramdas (appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the land from defendant No.1-Sudam could be entitled to be declared at the most to the extent of half share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No. 19 admeasuring 2.56 H.R.

15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in *M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors.* [AIR 1966 SC 470], wherein this Court stated as follows:

"Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener whose share he had purchased." B

16. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in *Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh & Ors.* [AIR 1953 SC 487], wherein this Court held as under:- C

"All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and *his right to possession would date from the period when a specific allotment was made in his favour* (Emphasis added) D

17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court. E

18. Our attention was also drawn to the grounds taken by the appellant in his memorandum of appeal before the High Court wherein the appellant himself got framed a question of law to the following extent : - F

"Whether the learned First Appellate Court has not committed perversity in holding that registered sale-deed G

A dtd.19-3-1980 (Ex.248) executed without obtaining the permission of Smt. Sitabai, present respondent no.1 (original plaintiff) and thus null and void in its' entirety and not binding on her at least to the extent of the share of executant (Deceased Deft. No.1)?"

B 19. Therefore, what the appellant has claimed is only half share of the said property. The said issue has been considered at length by the High Court in its impugned judgment. The High Court has recorded the statement made by the counsel appearing for the defendant No.3-Ramdas (appellant herein) that the action of the Additional District Judge in declaring that the said sale deed as null and void was not proper to the extent of the shares of plaintiff- Sitabai in the Gat No. 19 area admeasuring 2.56H of Mouza Padoli. Therefore, the fact that the plaintiff-Sitabai was entitled to her half share in the aforesaid property is an admitted position and on that basis the consent decree was passed. Even otherwise, we are of the considered opinion that the appellant herein having purchased only undivided share in the aforesaid property could not have purchased, owned and claimed for more than half share in the said property nor the appellant could have claimed possession in respect of the entire property. The appellant herein has further claimed relief on the ground of equity. However, we do not find any reason to hold in favour of the appellant even on the ground of equity as the appellant herein himself is responsible for his act in purchasing undivided share in a part of the suit property without the knowledge and consent of the co-sharer. Besides, indisputably and as held by the Trial Court, the land in Gat No. 19 is extremely valuable and, therefore, the question of equity does not arise as we would be doing injustice to one having title and ownership if we accept the prayer of the appellant.

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20. Consequently, we find no reason to interfere with the judgment and order passed by the High Court and therefore we are of the considered view that the decrees passed by the first appellate court and the High Court are in accordance with

law. The same are affirmed. Accordingly, we issue a direction to appellant herein to handover possession of field Gat No. 19 area admeasuring 2.56H of Mouza Padoli, Tahsil & Distt., Chandrapur to the plaintiff-Sitabai within a period of three months from today failing which the plaintiff-Sitabai would be entitled to initiate appropriate proceedings for execution of the decree in which case possession of the half portion of the aforesaid property shall be made and given in favour of the plaintiff-Sitabai.

21. In terms of the aforesaid observations and directions this appeal is dismissed with costs.

K.K.T.

Appeal dismissed.