NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).8859 OF 2019
(arising out of SLP (Civil) No(s). 16697 of 2018)

NARESH AND OTHERS ...APPELLANT(S)

VERSUS

HEMANT AND OTHERS ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The appellants who were the original defendants in the Suit are aggrieved by the order of the High Court allowing the respondents-plaintiffs' Second Appeal, upsetting the concurrent findings of facts by two courts. The parties shall be referred to by their respective positions in the Suit for better appreciation and convenience.

3. The predecessors of the plaintiffs and the defendants were brothers namely, Ramchandrarao Ingole and Trimbakrao Ingole.

They partitioned among themselves in 1952. The suit property consists of 7011 sq. ft. of lands, with a house constructed in 1974-75 thereupon leaving substantial vacant lands, was purchased jointly in the name of the two brothers by sale deed dated 29.03.1957. Trimbakrao Ingole expired in 1980 and Ramchandrarao Ingole also passed away on 22.03.1995. The plaintiffs as legal heirs of Ramchandrarao Ingole, relying on the sale deed filed Special Civil Suit No.268 of 1995 seeking partition and possession of their half share in the suit property.

4. The suit was dismissed by the Trial Court. The first appeal preferred by the plaintiffs was also dismissed. Both the courts arrived at concurrent findings of facts that the plaintiffs had failed to prove that Ramchandrarao Ingole had contributed to the purchase of the suit property or that at any time he had been a beneficiary of the purchase by residence or possession. The house had been constructed exclusively by Trimbakrao Ingole from his own funds and who remained in exclusive possession of the same relying on the admissions of PW-1 in his evidence. Ramchandrarao Ingole was held not to be a vendee of the suit property.

5. Shri V.C. Daga, learned senior counsel appearing for the appellants, submitted that the High Court in a Second Appeal under Section 100 of the Civil Procedure Code should not have interfered with the concurrent findings of facts by two courts that Ramchandrarao Ingole was not and was never intended to be a beneficiary of the purchase. The presumption under Section 45 of the Transfer of Property Act (hereinafter referred to as 'the Act'), by reason of his name being mentioned in the sale deed as a vendee also was rebuttable and not absolute. Two courts on appreciation of the oral evidence, were satisfied for reasons recorded that Ramchandrarao Ingole was never a beneficiary or in joint ownership of the suit property. Trimbakrao Ingole alone was present at the time of registration and the stamp papers were also purchased by him. The construction was also raised by him alone from his own funds, acknowledged by PW-1 in his evidence. Ramchandrarao Ingole never raised any claim for share in the property either during the life time of Trimbakrao Ingole or for fifteen years thereafter till his own death. It is only after the passing away of Ramchandrarao Ingole that his legal heirs staked claim for partition based merely on

the recitals in the sale deed. Section 92 of the Indian Evidence Act has no application in the facts of the case as it is applicable only in case of a bilateral document relying on ***Bai Hira Devi and others vs. Official Assignee of Bombay,*** AIR 1958 SC 448. The present sale deed was a unilateral document executed by the vendor alone. It was lastly submitted that the house was built in 'L' shape and by design was incapable of being divided. The plaintiffs, as evident from their own pleadings were indulging in speculative litigation, eyeing the vacant area of the suit property.

6. Shri Pallav Sisodiya, learned senior counsel appearing for the respondents, submitted that the suit property was purchased by both the brothers together in view of their cordial relations. The cordiality ended with the death of Ramchandrarao Ingole. Thus, the suit came to be filed after his death. Relying on the recitals in the sale deed, reading the same in conjunction with Section 45 of the Act, it was submitted that Ramchandrarao Ingole was co-owner by operation of law. The fact that he may not have been in possession does not raise any estoppel precluding him or his legal heirs from asserting their rights, relying upon ***Suraj Rattan Thirani and***

others vs. Azamabad Tea Co. Ltd. And others, (1964) 6 SCR 192. Signature of the vendee on the sale deed was not mandatory, as held in ***Aloka Bose vs. Parmatma Devi and others,*** (2009) 2 SCC 582. The fact that Trimbakrao Ingole may have signed at the time of registration on the reverse of the deed or that his name may have been mentioned as the purchaser of the stamp papers does not make him and his legal heirs the exclusive owners of the property. The oral evidence by both sides was insufficient to exclude the rights of the plaintiffs. The appellants were unable to lead any evidence under the second and third proviso to Section 92 for rebutting the presumption in the law in favour of the plaintiffs under Section 45 of the Act. The fact that the original sale deed may have been produced by the defendants cannot be proof of exclusive ownership. The findings in favour of the defendants by the Trial Court and the First Appellate Court are only in the realm of probabilities. The High Court rightly held in the nature of the evidence, that the conclusions arrived at by the two courts below were, therefore, perverse.

7. We have considered the submissions on behalf of the parties, perused the respective pleadings and the evidence on record. The plaintiffs acknowledged the construction of a house on the suit property, seeking a share in the vacant lands fully aware of the nature of the construction which could not be partitioned. The defendants in their additional written statement had stated that originally both the brothers proposed to purchase the property together. Subsequently Ramchandrarao Ingole retracted and was not interested in purchasing the property due to funds crunch. Trimbakrao Ingole therefore alone paid the entire consideration. Since the stamp papers had already been purchased and the sale deed drafted in name of both the brothers, registration followed without any change. It is very important to notice that no rejoinder or replication was filed by the plaintiffs to this additional written statement.

8. The evidence was in the nature of oath versus oath by the legal heirs of the two brothers. No documentary evidence except for the sale deed was led. The Trial Court correctly noticed the gap of 36 days between the preparation of the sale deed on 29.03.1957 and its

subsequent registration on 03.05.1957 as a circumstance to accept the contention of the defendants that Ramchandrarao Ingole retracted from any contribution and his status as a vendee or beneficiary of the purchase. Since registration on 03.05.1957 till the institution of the suit by the legal heirs of Ramchandrarao Ingole, 38 years later, he did not prefer any claim since 03.05.1957 till his brothers death in 1980, including for 15 long years till his own death on 23.03.1995. Thereafter, PW-1 in his evidence admitted that the construction of the house had been made by Trimbakrao Ingole alone. There is no evidence that this construction was made from joint family funds. It is an undisputed fact that the plaintiffs at no point of time ever since purchase resided in the house or upon the suit lands or enjoyed the same in any manner let alone incurred any expenditure on the same.

9. The claim for a presumption under Section 45 of the Act in favour of the plaintiffs was raised for the first time before the First Appellate Court but was negated in light of the factual findings. Importantly, it was held that mere failure of the defendants to adduce satisfactory evidence that Trimbakrao Ingole had paid the

entire consideration did not absolve the plaintiffs of their duty to establish their own claim in accordance with law by satisfactory evidence to substantiate the presumption sought to be relied upon. In other words, the appellate court correctly held that the weakness of the defence could not become the strength of the plaintiff, especially when the defendants were disputing their claims.

10. Section 45 of the Transfer of Property Act read as follows:

> "45. Joint transfer for consideration.—Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.
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> In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."

11. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW-1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.

12. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction

confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

13. In ***Madamanchi Ramappa vs. Muthaluru Bojappa,*** (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

> "12. ….The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be

> properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

14. Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on ***Gurdev Kaur and others vs. Kaki and others***, (2007) 1 SCC 546, holding as follows:

> "71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC

have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

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73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

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81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

> 82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

15. The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed.

.....J.
(Ashok Bhushan)

.....J.
(Navin Sinha)

New Delhi,
November 19, 2019.