

२३/४/२०२६

१. दिवसी व्यापारिक क. पर व्यापारिक

संज्ञा व्यापारिक

गान्धी सुभाष चन्द्र - बापू

कि

शेवका रिजर्वी चन्द्र - श्रीवास्तव

सामर्थ्य बापू गुरु पुस्तिका संशोधन

सामर्थ्य व्यापारिकों के कर्म को है.

① २०२५ DGL (SC) 1366

② २०२५ DGL (Bom) 869

③ २००५ DGL (SC) 1179

योगदाने ③ व्यापारिकों

कर्म को है मूल्य दिवसी पुस्तिका
गान्धी व्यापारिक दि १/५/२०२६

Signature
ABV.

Order

Seen

C.J.J.D.,Kagal.

Date : 30/04/2026



2024 DGLS(SC) 1364
(SUPREME COURT)

Equivalent Citations :-

Before :- P.S. Narasimha : Misra Manoj :JJ

Daliben Valjibhai and Others

Versus

Prajapati Kodarbhai Kachrabhai and Another

Case No. : Civil Appeal No..... of 2024 (Arising Out of SLP (Civil) No.23625 of 2024)

Date of Decision : 11-12-2024

Acts Referred :

Code of Civil Procedure,O.7 R.11

Code of Civil Procedure,S.80

Transfer of Property Act,S.3

Indian Registration Act,S.34

Indian Registration Act,S.35

Limitation Act,Art.59

Code of Civil Procedure,S.100

Code of Civil Procedure,O.7 R.11(d)

Cases Referred :

1. Chhotanben and Another Vs. Kiritbhai Jalkrushnabhai Thakkar and Others;2019 MPLJ (1) 491 : 2018 Supreme (4) 170 : 2019 Mh.L.J. (2) 17 : 2018 All.M.R. (5) 946 : 2018 G.L.H. (3) 338 : 2018 Scale (5) 472 : 2018 ALD(SC) (5) 29 : 2018 JT (4) 145 : 2018 DGLS(SC) 270 : 2018 Bom.C.R. (4) 293 : 2018 ALR (128) 719 : 2018 AIR(SC) 2447 : 2018 AIR(SCW) 2447 : 2018 SCC (6) 422 : 2018 CTC (4) 206 : 2018 MLJ (5) 588 : 2018 JKJ (2) 10 : 2018 KCCR SN (3) 264 : 2018 G.L.R. (3) 2308 : 2019 Cal.L.T. (1) 41 :

2. P.V.Guru Raj Reddy Rep. By Gpa Laxmi Narayan Reddy and Another Vs. P.Neeradha Reddy and Others Etc.;2015 RD (127) 795 : 2015 ALR (109) 908 : 2015 O.L.R. (1) 714 : 2015 JCR(SC) (2) 190 : 2015 AIR(SC) 2485 : 2015 AIR(SCW) 2922 : 2015 ALD(SC) (4) 66 : 2015 All.M.R. (2) 986 : 2015 BCI 318 : 2015 DGLS(SC) 179 : 2015 KCCR SN (3) 309 : 2016 Mh.L.J. (2) 15 : 2015 MLJ (2) 377 : 2016 MPLJ (1) 585 : 2015 RLW (4) 2925 : 2015 Scale (2) 337 : 2015 SCC (8) 331 : 2015 ALT(SC) (3) 14 : 2015 A.I.C. (148) 222 :

Advocate Appeared :

Mr. Nikhil Goel, Sr. Adv., Mr. Pradhuman Gohil, Adv., Mrs. Taruna Singh Gohil, AOR Mr. Alapati Sahithya Krishna, Adv., Ms. Hetvi K. Patel, Adv., Mr. Rushabh N. Kapadia, Adv., Mr. Siddharth Singh, Adv., Ms. Siddhi Gupta, Adv., For the Petitioners. Dr. Purvish Jitendra Malkan, Sr. Adv., Mr. Jigar Gadhvi, Adv., Mr. Dharita Malkan, Adv., Mr. Alok Kumar, Adv., Mr. Rajesh Udit Singh, Adv., Ms. Khushboo Aakash Sheth, AOR For the Respondents.

JUDGMENT

1. Leave granted.

2. The appellants, as plaintiffs, instituted a suit for cancellation of an alleged registered sale deed dated 04.12.2004 said to have been executed by them conveying the plaint scheduled property in favour of the respondents/defendants on 10.04.2017. They have alleged that the said sale deed was brought about through fraudulent means and the plaintiffs came to know of it only on 31.03.2017, when the Deputy Collector issued notice to the appellants on an application filed by the defendants for correcting the revenue entries. After receiving the said notice, the appellants claim to have applied



and obtained a certified copy of the alleged sale deed and having realised thereafter that their signatures were forged, they instituted the suit on 18.04.2017 for a declaration and cancellation of the sale deed.

3. Within one month of the institution of the suit, the defendants filed an application under Order 7 Rule 11, CPC, for rejection of plaint on two grounds; the first being that the plaintiffs have not joined the Sub- Registrar as the defendant no. 2 and that the mandatory notice under Section 80 CPC was not given. We are not concerned with this ground. The second ground for rejection of the plaint which has given rise to the present litigation is that the suit is barred by limitation as the registered sale deed was executed on 04.12.2004 and the suit came to be filed only on 10.04.2017, i.e. after a period of 13 years.

4. The Trial Court took up the said application under Order 7 Rule 11, and by its order dated 26.04.2018 allowed the same and dismissed the suit on the following grounds:

"After going through the Sale deed vide mark 4/1 it is crystal clear that the sale deed have been carried out in favour of the Defendant on Prajapati Kodarbhai Kachrabhai in the year 2004 and the present suit has been filed after a delay of 13 years. Further the defendant have rightly relied on the ratio laid down in the case of Kamal Gupta v/s Uma Gupta in para 31,32,33 wherein the Hon'ble Court have held that the plaintiff have filed the present suit after a delay of 16 years and limitation would also apply: The said decision squarely applies to the present case as the present suit has been filed after a period of 13 years and to challenge the Sale deed the period of limitation as prescribed in the Limitation Act is of 3 years has lapsed. The plaintiff have filed the present suit after a delay of 13 years and as such is beyond the period of limitation Further the plaintiff were well aware of the Sale deed from the year 2004. The suit is not maintainable and required to be rejected in terms of provisions under Order 7 Rule 11."

5. The appeal filed by the appellants was considered by the Principal Judge, Banaskantha at Palanpur and by its judgment dated 17.10.2023 allowed the appeal on the ground that;

(i) The contentions raised in the plaint are that the appellants came to know of the alleged sale deed of 2004 only in the year 2017 when they received notice from the Deputy Collector.

(ii) It is also alleged that the signatures and thumb impression on the document were not of the plaintiffs. They allege that the plaintiff's signatures and photographs were forged and they were never present at the place when registration took place. The relevant portion of the plaint extracted herein below, was recorded in the order:

"4. That the defendants have made false sale deed on 4.12.2004 of the aforesaid ancestral land of the plaintiffs by doing false signatures and thumb impressions and the same is registered vide Registered Sale deed No.1643 at Sub Registrar office at Danta. That the plaintiffs have obtained the True copy of the aforesaid false Sale deed from Sub Registrar office at Danta on 10.04.2017 and looking to the same in the said document the plaintiffs have not made their signatures or also not produced any photographs or Identity card of the plaintiffs. At the same time on the stamp paper which is produced, the same is also not purchased by the plaintiffs. That the plaintiffs never remained present before the Sub Registrar office at Danta, though the defendants by using their illegal influence registered this false and fabricated sale deed in the Sub Registrar office."

(iii) The final determination as to whether the claim is barred by time or not, can be decided only after considering the evidence led by the parties as limitation is always a mixed question of law and fact. The Trial Court neither verified, nor could find a single document to suggest that the plaintiffs were aware of the execution of the sale deed in the year 2004.

(iv) It appears that the stamp papers were purchased by the defendants and not by the plaintiffs and this important fact was not even considered by the Trial Court while deciding the application under Order-VII Rule-11 of C.P.C.

(v) Though the law requires the Talati to make an entry of the sale deed in the revenue records as per the Resolution of the Department of Revenue, Government of Gujarat in hkp-1087- 11-j, dated



15.10.1989, this is not complied.

(vi) As per the said Resolution, a duty is cast on the revenue authority to make an entry in the relevant register with respect to sale deeds. There is no material to show that such an entry has been made. The Court can therefore presume that no such notice was issued to the plaintiffs.

(vii) The contention of the defendant that they made an application under the RTI Act on 30.05.2014 itself but no response was received is to be rejected on the ground that the appellants were not party to the RTI proceedings.

(viii) The various contentions raised by the defendant cannot be taken into account at this stage as the relevant material for disposing of an application under Order 7 Rule 11 would be the facts as mentioned in the plaint and no more.

6. Challenging the decision of the First Appellate Court, the defendants filed a second appeal before the High Court of Gujarat at Ahmedabad. By the order impugned before us, the High Court allowed the second appeal.

7. From the tone and tenor of the judgment of the High Court, it appears that the High Court was proceeding to decide the case on merits, rather than an application under Order 7 Rule 11. The High Court referred to and extracted relevant portions of large number of precedents on the subject of Order 7 Rule 11, of the same High Court as well as the decisions of this Court. Having recorded the principle that operation and impact of Order 7 Rule 11, being a drastic remedy, Courts must adhere to the discipline of confining their scrutiny to the plaint averments, the High Court however proceeded to consider other aspects of the matter. The fact that the High Court relied on and has in fact drawn inferences that were possible only after a trial is evident from the following findings:

(i) By virtue of the definition of the expression "a person is said to have notice" under Section 3 of the Transfer of Property Act, 1882, coupled with the explanation I, the plaintiff has the burden to prove and establish that he had no knowledge of the sale deed.

(ii) In the normal course, nobody will wait for 13 years to institute a suit for cancellation of the sale deed. It is normal to expect any plaintiff to have made some enquiry about the execution of the sale deed

(iii) The First Appellate Court has wrongly shifted the burden on to the defendant, when it is for the plaintiffs to show that they were not aware of the execution of the sale deed in the year 2004.

(iv) The "*plaintiff willfully abstained from inquiry which he ought to have made*" when the Deputy Collector in RTS issued notice to him.

(v) Mere usage of the expression 'fraud' in the pleading is not sufficient. The plaintiff must have given details with material particulars of the fraud alleged. When a plaintiff bases his case on fraud committed by the defendant, there is an obligation to plead the details of the said fraud. The essential particulars of such fraud are missing in the plaint.

(vi) Further, the particulars of the alleged fraud must be *prima facie* enough to rebut the presumption of the validity of a sale deed under Sections 34 and 35 of the Registration Act. No such details are available in the plaint.

(vii) Once a document is registered under the Registration Act, the date of registration becomes the date of deemed knowledge.

(viii) Though Article 59 of the Limitation Act enables institution of a suit to cancel or set aside an instrument within a period of 3 years, from the date of knowledge, the bar of limitation cannot be saved by simply pleading fraud.



8. For the reasons stated above, the High Court proceeded to allow the second appeal and set aside the judgment of the First Appellate Court and restored the order of the Trial Court, rejecting the plaint and dismissing the suit. This is how the appellants are before us.

9. Having considered the judgment of the High Court in detail, we are of the opinion that the findings of the High Court are primarily factual. The High Court seems to have got carried away by the fact that the suit was filed 13 years after the execution of the sale deed. The question is whether the plaintiffs had the knowledge of the execution of the sale deed. The High Court expected that the plaintiffs must have given meticulous details of the fraud perpetuated in the plaint itself.

10. The First Appellate Court came to the conclusion that the defendants made an application for correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the sale deed. It is under these circumstances that the suit was instituted in the year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

11. This Court had to deal with a similar situation in *P.V. Guru Raj Reddy v. P. Neeradha Reddy*, (2015) 8 SCC 331. A suit instituted by the plaintiff in the year 2002 for cancellation of sale deed of year 1979 on the ground that the knowledge of fraud was acquired only in 1999, was objected to by the defendant in an application under Order 7 Rule 11 on the ground that it is barred by limitation. This Court held:

"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."

(emphasis supplied)

12. Further, in *Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422 where again a suit for cancellation of sale deed was opposed through an application under Order 7 Rule 11, on ground of limitation, this Court specifically held that limitation in all such cases will arise from date of knowledge. The relevant portion is as follows:

"15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant- plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took



steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.

...

19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC."

(emphasis supplied)

13. In view of the above, there was no justification for the High Court in allowing the application under Order 7 Rule 11, on issues that were not evident from the plaint averments itself. The High Court was also not justified in holding that the limitation period commences from the date of registration itself. In this view of the matter the judgment of the High Court is unsustainable.

14. In any event of the matter, the High Court was examining the issue while exercising jurisdiction under Section 100 of CPC and as such reversal of the judgment of the first Appellate Court on facts was impermissible.

15. In view of the above, we allow the appeal and set aside the judgment and order dated 26.06.2024 passed by the High Court in Second Appeal No.53 of 2024 and we restore the judgment dated 17.10.2023 of the First Appellate Court in Regular Civil Appeal No.6 of 2022.

16. Since the original suit is of the year 2017, we direct that the trial Court should take up the suit and dispose it of as expeditiously as possible. We also make it clear that we have not expressed any opinion on the merits of the matter and our opinion is confined to determining the question as to whether the plaint should be rejected under Order 7 Rule 11, CPC.

17. Pending application(s), if any, shall stand disposed of.



2024 DGLS(Bom.) 669
(BOMBAY HIGH COURT)

Equivalent Citations :-

Before :- S.V. Marne :J

Vishnu Balwant Wagh (Patil) and Others
Versus
Subhash Vishnu Wagh Patil and Others

Case No. : Second Appeal No.315 of 2020, Civil Application No.767 of 2018 and Interim Application No.144 of 2024
Date of Decision : 11-01-2024

Acts Referred :

Code of Civil Procedure,S.100
Hindu Marriage Act,S.11

Case Referred :

1. Revanasiddappa and Another Vs. Mallikarjun and Others;2023 Supreme (6) 202 : 2023 AIR(SCW) 4707 : 2023 Supreme (6) 420 : 2023 DGLS(SC) 933 : 2023 AIR Bom R (6) 261 : 2023 AIR(SC) 4707 : 2023 SCC (10) 1 :

Advocates Appeared :

Mr. Ashutosh M. Kulkarni, Advocate for the Appellant.
Mr. Kuldip U. Nikam instructed by Mr. Om Latpate, Advocate for the Respondent Nos. 1 & 2.

JUDGMENT :

1. This Appeal is filed by the Appellants challenging the Judgment and Decree dated 31 March 2018 passed by District Judge, Sangli dismissing Regular Civil Appeal No. 408 of 2008 and thereby confirming the Decree dated 18 October 2008 passed by Civil Junior Division Tasgaon in Regular Civil Suit No. 179 of 1999.

2. Briefly stated, the facts of the case are that Vishnu Balwant Wagh originally owned and possessed the suit properties. He was married to Shantabai Vishnu Wagh. Out of wedlock between Vishnu and Shantabai, son -Subhash is born. Vishnu also married Sonabai and out of that wedlock, two sons Babaso and Nandkumar and one Daughter Alka is born. The present Appeal arises out of disputes between the First wife Shantabai and her son Subhash on one hand and Vishnu's second wife Sonabai and their children Babaso, Nandkumar and Alka on the other hand. Subhash and Shantabai instituted Regular Civil Suit No. 179 of 1999 seeking partition and separate possession of the suit properties and seeking 2/3rd share. The suit was resisted by Appellant-Defendant No.1 Vishnu by filing Written Statement. Defendant Nos. 2 to 4 - Sonabai, Babaso and Nandkumar filed separate written statements and also raised a counterclaim and sought injunction against Plaintiffs from obstructing possession of suit property by them. The Trial Court proceeded to decree the suit on 18 October 2008 declaring that Plaintiffs Subhash and Shantabai have 2/3rd joint share in the suit properties and that Defendant No.1 has 1/3rd share in the suit properties. This is how Sonabai, Babaso, Nandkumar and Alka are denied any share in the suit properties holding that Sonabai's marriage with Vishnu is void under provisions of Section 11 of the Hindu Marriage Act.

3. Aggrieved by the decree of the Trial Court, Vishnu, Sonabai, Babaso and Nandkumar filed Regular Civil Appeal No. 408 of 2008 before District Judge, Sangli, in which Alka was impleaded as party



Respondent. By its Judgment and Order dated 31 March 2018, the first Appellate Court has dismissed the Appeal and has confirmed the decree of the Trial Court. Aggrieved by the decision of the Trial Court and the first Appellate Court, Vishnu, Sonabai, Babaso and Nandkumar have filed the present Appeal.

4. Mr. Kulkarni the learned counsel appearing for the Appellant would submit that the marriage between Vishnu and Sonabai is valid as the same was solemnized prior to coming into effect of the Hindu Marriage Act. That the Trial Court and the first Appellate Court did not have any concrete evidence for arriving at a finding that the marriage between Vishnu and Sonabai has been solemnized after coming into effect of the Hindu Marriage Act. That such finding is recorded merely on the basis of surmises and conjectures, in the absence of any concrete evidence.

5. The next submission of Mr. Kulkarni is that the learned Trial Court and the first Appellate Court have erred in casting the burden of proving legal necessity for the sale of suit properties by Vishnu in favor of Defendant Nos. 2 to 4. That in a suit filed by the Plaintiffs challenging the Sale deeds, the burden of proving the Sale deeds as void rested solely on the shoulders of the Plaintiffs. The Trial Court and the first Appellate Court have erroneously presumed the Sale deeds to be void in the absence of any evidence being produced by the Defendants.

6. Lastly, Mr. Kulkarni would submit that the suit was clearly barred by limitation as the Sale deeds executed in the year 1999 could not have been challenged in a suit amended in the year 2003. That the Trial Court and the first Appellate Court have erroneously computed the period of limitation from the date of knowledge of the execution of Sale deeds, when the Sale deeds are registered and presumed to be known to the Plaintiffs. That challenge to the Sale deeds was belatedly raised by amending the plaint in the year 2003 and the amendment cannot relate back to the date of filing of the suit.

7. Mr. Kulkarni would therefore submit that substantial questions of law are involved in the present Appeal warranting its admission and setting aside the Orders passed by the Trial Court and the first Appellate Court.

8. *Per contra*, Mr. Nikam the learned counsel appearing for Respondent Nos. 1 and 2 would oppose the Appeal and support the Orders passed by the Trial Court and the first Appellate Court. He would submit that no substantial question of law is involved in the present Appeal and findings recorded on the questions of fact decided by the Trial Court and the first Appellate Court do not warrant interference by this Court in the exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

9. I have considered the submission canvassed by the learned counsel appearing for the rival parties and have gone through the pleadings, evidence and judgments of the Trial Court and the first Appellate Court. Mr. Kulkarni has placed on record a compilation for perusal of the relevant pleadings, documents and evidence.

10. This is a typical dispute between the branches of two wives claiming share in the ancestral properties. There is no dispute to the position that the marriage between Vishnu and Shantabai was solemnized at a prior point of time and Subhash was born before Vishnu married Sonabai. There is the great degree of debate between the parties as to the exact date of the solemnization of marriage between Vishnu and Sonabai. The Appellants/ Orig. Defendant Nos. 1 to 4 sought to plead before the Trial Court that the marriage between Vishnu and Sonabai was solemnized before coming into effect of the Hindu Marriage Act, 1955. It was necessary for them to take this defence as they know that solemnization of a second marriage during the subsistence of earlier marriage renders the subsequent marriage void under the provisions of Section 11 of the Hindu Marriage Act. It is for this reason that it was sought to be urged before the Trial Court that Sonabai married Vishnu before 1955. However, a perusal of two written statements filed by Vishnu and Defendant Nos. 2 to 4 would show that no specific date of solemnization of marriage is pleaded therein. Thus Defendant Nos. 1 to 4 left it for the Trial Court to guess as to what is the exact date of marriage between Vishnu and Sonabai. On the other hand Plaintiffs came up with a specific case that the marriage was void on account of it being



solemnized during the subsistence of the first marriage. Though Mr. Kulkarni has attempted to canvass that the burden of proving solemnization of marriage between Vishnu and Sonabai after coming into effect of the Hindu Marriage Act rested on the shoulders of Plaintiffs, I am unable to agree with the said contentions. The Plaintiffs came with a specific case that the marriage was void. It was Defendant Nos. 1 to 4 who sought to give validity to the marriage by contending that the same was solemnized before coming into effect of the Hindu Marriage Act. Therefore the burden of proving this assertion rested on Defendant Nos. 1 to 4 and not on Plaintiffs. Defendant Nos. 1 to 4 could not discharge the burden by leading evidence about the solemnization of marriage prior to 1955.

11. Having left it for the Trial Court and the first Appellate Court to guess as to what could be the exact date of solemnization of marriage, the Courts below have looked into the surrounding circumstances about year of births of Subhash and the ages of Babaso and Nandkumar reflected in various documents. The first Appellate Court has held that the ages of Defendant Nos. 3 and 4 reflected in the Sale deeds on 24 June 1999 proved that they could have been born in the years 1965-1967 respectively. It has come on record that Shantabai allegedly left Vishnu when Subhash was six months old. Subhash is born in the year 1956. Based on these circumstances the first Appellate Court has assumed that the marriage between Vishnu and Sonabai must have been solemnized after the year 1956. I do not find any reason to interfere in the said finding of fact recorded after taking into consideration the evidence on record. It is thus conclusively provided that the marriage between Vishnu and Sonabai was performed after coming into effect on the Hindu Marriage Act and the same is therefore void. As held by the Apex Court in its judgment in *Revanasiddappa Vs. Mallikarjun* 2023 SCC OnLine 1084, children born out of void marriage do not become coparceners and only claim rights in share allotted to the father. Therefore, neither Sonabai nor her children Babaso, Nandkumar and Alka can claim any independent share as coparceners in the suit property. The Trial Court has thus rightly denied any share in the suit property to Sonabai, Babaso, Nandkumar and Alka.

12. An alternate plea is raised by Babaso and Nandkumar of having acquired title in the suit properties on the strength of Sale deeds executed by Father - Vishnu in their favor on 7 June 1999, 24 June 1999, 30 March 1999 and 27 November 2022. Since father-Vishnu is not the exclusive owner in respect of the suit properties and could have at the highest alienated only his share, a defence is taken that alienation of property by father-Vishnu, in his capacity as 'Karta' of joint family, was towards legal necessity. The Trial Court and the first Appellate Court have refused to believe the theory of legal necessity. Vishnu claimed in his written statement that the Sale deeds were executed for specific family debts and medical expenditure. However, he did not produce any evidence in respect of the alleged family debts. No documents were placed on record by him for having spent any expenditure on his medical treatment. The Trial Court and the first Appellate Court have evaluated the evidence on record and have recorded a finding of fact that there was no legal necessity for Vishnu to alienate the suit properties. It must also be borne in mind that Vishnu has sold the suit properties in favor of his sons. Three out of the four Sale deeds have been executed just before the filing of the suit for partition on 17 August 1999 and the other Sale deed was executed during the pendency of the suit. I again do not find any reason for interfering in the finding of fact that there is absence of legal necessity to alienate the suit properties.

13. The last issue raised by Mr. Kulkarni is about the suit being barred by limitation *qua* the prayer for declaration of Sale deeds as void. So far as the Sale deed dated 27 November 2002 is concerned, the said objection is not maintainable as Suit is amended in 2003. The objection is raised in respect of the other three sale deeds of 7 June 1999, 24 June 1999, and 30 September 1999. It appears that after acquisition of knowledge of said Sale deeds, Suit was amended on 1 July 2003. The Trial Court has repelled the objection of limitation by holding that the knowledge of the execution of Sale deeds was acquired by Plaintiffs during the pendency of the suit. The Trial Court has also relied upon the revenue entries pertinent to the years 1998 and 1999 (before filing of suit) which reflect names of Defendant Nos. 3 and 4 as owners of the suit property. The period of limitation has been computed in the present case from the date of acquisition of knowledge of execution of the Sale deeds. Here again, no serious flaw can be found in the Orders passed by the Trial Court and the first Appellate Court.

14. After considering the overall conspectus of the case, I am of the view that no substantial question



of law is involved in the present Appeal. The Appeal is accordingly rejected, without any Orders as to costs.

15. In view of the disposal of the Second Appeal, Civil Application No.767 of 2018 and Interim Application No.144 of 2024 do not survive and the same are also disposed of.

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2004 DGLS(SC) 1179
(SUPREME COURT)

Equivalent Citations :- 2005 AIR(SC) 752 : 2005 (3) Bom.C.R. 204 :2005 (1) JT 97 :2004 (10) Scale 501 :2005 (2) SCC 673 :2005 SCC(Cri) 546 : 2005 (26) A.I.C. 423 :

Before :- Balakrishnan Konakuppakatil Gopinathan :Lahoti Ramesh Chandra :Mathur Govind Prasad :Patil Shivaraj Virupanna :Srikrishna Bellur Narayanaswamy : JJ

Central Board of Dawoodi Bohra Community
Versus
State of Maharashtra

Case No. : 740 of 1986 in i.a.no.4
Date of Decision : 17-12-2004

Acts Referred:

Constitution of India, Art.141
Constitution of India, Art.145(3)
Constitution of India, Art.25(2)
Constitution of India, Art.26(b)

(A) Bombay Prevention of Ex-Communication Act, 1949, Preamble - Constitution of India, Art. 26(b) - Doctrine of binding precedents - Five- Judge Bench ruled by majority that Bombay Prevention of Ex-Communication Act, 1949 was ultra vires and violative of Article 26(b) of Constitution - Held, (1) Law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. (2) A Bench of lesser quorum cannot doubt the correctness of view of law taken by a Bench of larger quorum. In case of doubt all that Bench of lesser quorum can do is to invite the attention of Chief Justice and request for matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. 2002(1) S.C.C. 1; 2002(4) S.C.C. 234; 2002(10) S.C.C. 437; 2004(8) S.C.C. 30 followed. (Para 12)

(B) Constitution of India, Art. 32 - Writ petition seeking reconsideration and overruling of decision given by five Judge Bench of Supreme Court - By majority of 4 :1 in 1962 Suppl.(2) S.C.R. 496 - That Bombay Prevention of Ex- Communication Act, 1949 is ultra vires of Constitution - As it violated under Article 26 of Constitution and not saved by Article 25(2) of Constitution - Two Judge Bench directed "rule nisi" and directed for listing of matter before seven- Judge Bench for hearing - Petition seeking direction for listing matter before Division Bench of two Judges - Objected by petitioner - Held, no reference made by any Bench of any strength at any time for hearing by a larger Bench and doubting the correctness of Constitution Bench decision in 1962 Suppl.(2) S.C.R. 496. Order by two-Judge Bench cannot be construed as an order of reference. At no point of time Chief Justice of India directed matter to be placed for hearing before Constitution Bench or Bench of seven Judges. Matter placed for hearing before Constitution Bench. (Para 13)

(C) Interpretation - Per incuriam - Held, a ruling making specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam. (Para 6)

Cases Referred:

- 1.Bharat Petroleum Corporation Vs. Mumbai Shramik Sangha
- 2.Chandra Prakash Vs. State of U.P
- 3.K.M.Sengoda Goundar Vs. State of Madras
- 4.Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay
- 5.Union of India Vs. Hansoli Devi
- 6.Union of India: Prithipal Singh: Ram Mehar Raj Kumar: Delhi Cattle Breeding Farms Private Limited Vs. Raghubir Singh: Union of India: Union of India: Union of India



7.Vishweshwaraiah Iron and Steel Limited Vs. Abdul Gani

R.C. LAHOTI, J.

In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* 1962 Suppl.(2) SCR 496, a five-Judge Bench of this Court ruled by a majority of 4 : 1 that the Bombay Prevention of Ex-communication Act (Act No. 42 of 1949) was ultra vires the Constitution as it violated Article 26 (b) of the Constitution and was not saved by Article 25(2). On 26.2.1986 the present petition has been filed seeking reconsideration, and over-ruling, of the decision of this Court in *Sardar Syedna Taher Saifuddin Sahebs* case (supra) and then issuing a writ of mandamus directing the State of Maharashtra to give effect to the provisions of the Bombay Prevention of Ex-communication Act, 1949.

2. The matter came up for hearing before a two-Judge Bench of this Court which on 25.8.1986 directed rule nisi to be issued. On 18.3.1994 a two-Judge Bench directed the matter to be listed before a seven-Judge Bench for hearing. On 20.7.1994 the matter did come up before a seven-Judge Bench which adjourned the hearing awaiting the decision in W.P.No. 317 of 1993. On 26.7.2004 IA No. 4 has been filed on behalf of respondent No. 2 seeking a direction that the matter be listed before a Division Bench of two judges. Implicitly, the application seeks a direction for non-listing before a Bench of seven Judges and rather the matter being listed for hearing before a Bench of two or three judges as is the normal practice of this Court. In the contents of the application reliance has been placed on the Constitution Bench decisions of this Court in *Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha & Ors.* (2001) 4 SCC 448 followed in four subsequent Constitution Bench decisions namely *Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors.*, (2002) 1 SCC 1, *Chandra Prakash & Ors. v. State of U.P. & Anr.*, (2002) 4 SCC 234, *Vishweshwaraiah Iron & Steel Ltd. v. Abdul Gani & Ors.*, (2002) 10 SCC 437 and *Arya Samaj Education Trust & Ors. v. Director of Education, Delhi & Ors.*, (2004) 8 SCC 30.

3. The prayer made on behalf of respondent No. 2 has been opposed by the petitioners submitting that the matter must come up before seven-Judge Bench only. Two reasons have been canvassed in opposing the prayer contained in IA No. 4 by Ms. Indira Jaising, the learned senior counsel for the petitioners. It was submitted that as the writ petition specifically calls for reconsideration of a five-Judge Bench decision of this Court wherein rule nisi has been issued, the matter must necessarily be heard by a seven-Judge Bench. Next, it was submitted that the decisions relied on by the learned counsel for the respondent No. 2 and referred to in IA No. 4 do not lay down the correct law.

4. We have heard the learned counsel for the parties at length. In our view, the prayer contained in the application deserves to be allowed only in part.

5. In *Bharat Petroleum Corporation Ltds* case (supra) the Constitution Bench has ruled that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges. Following this view of the law what has been declared by this Court in *Pradip Chandra Parija & Ors.s* case (supra) clinches the issue. The facts in the case were that a Bench of two learned Judges expressed dissent with another judgment of three learned Judges and directed the matter to be placed before a larger Bench of five Judges. The Constitution Bench considered the rule of judicial discipline and propriety as also the theory of precedents and held that it is only a Bench of the same quorum which can question the correctness of the decision by another Bench of the co-ordinate strength in which case the matter may be placed for consideration by a Bench of larger quorum. In other words, a Bench of lesser quorum cannot express disagreement with, or question the correctness of, the view taken by a Bench of larger quorum. A view of the law taken by a Bench of three judges is binding on a Bench of two judges and in case the Bench of two judges feels not inclined to follow the earlier three-Judge Bench decision then it is not proper for it to express such disagreement; it can only request the Chief Justice for the matter being placed for hearing before a three-Judge Bench which may agree or disagree with the view of the law taken earlier by the three-Judge Bench. As already noted this view has been followed and reiterated by at least three subsequent Constitution Benches referred to hereinabove.



6. Ms. Indra Jaisingh, the learned senior counsel for the petitioners submitted that the view of the law taken by the abovesaid four Constitution Benches is per incuriam and is not the correct law as previous decision of this Court by a Constitution Bench in *Union of India and Anr. v. Raghubir Singh (dead)* by Lrs. etc. (1989) 2 SCC 754 takes a contrary view and being an earlier decision was binding on the subsequent Benches. We do not agree with the submission of the learned senior counsel that the decisions referred to by the learned counsel for the respondent No. 2/applicant are per incuriam. She has also placed reliance on a Constitution Bench decision in *Union of India & Anr. v. Hansoli Devi & Ors.* (2002) 7 SCC 273 wherein the Constitution Bench heard a Reference made by two-Judge Bench expressing disagreement with an earlier three-Judge Bench decision.

7. The Constitution Bench in the case of *Chandra Prakash and Ors. v. State of U.P. & Anr.* (2002) 4 SCC 234 took into consideration the law laid down in *Parijas* case and also referred to the decision in *Union of India and Anr. v. Raghubir Singh (dead)* by Lrs. etc. relied on by Ms. Indra Jaisingh, the learned senior counsel and then reiterated the view taken in *Parijas* case. Per incuriam means a decision rendered by ignorance of a previous binding decision such as a decision of its own or of a Court of co-ordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam. It is true that *Raghubir Singh's* case was not referred to in any case other than *Chandra Prakash & Ors.* case but in *Chandra Prakash & Ors.* case *Raghubir Singh's* case and *Parijas* case both have been referred to and considered and then *Parijas* case followed. So the view of the law taken in series of cases to which *Parijas* case belongs cannot be said to be per incuriam.

8. In *Raghubir Singh (dead)* by Lrs.s case, Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior Court the ideal condition would be that the entire Court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate related thereto and by such other considerations with the Chief Justices, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individuals as to the consequence of transactions forming part of his daily affairs.

9. Further, the Constitution Bench speaking through Chief Justice Pathak opined that the question was not whether the Supreme Court is bound by its own previous decisions; the question was under what circumstances and within what limits and in what manner should the highest Court overturn its own pronouncements. In our opinion, what was working in the mind of His Lordship was that being the highest Court of the country, it was open for this Court not to feel bound by its own previous decisions because if that was not permitted, the march of Judge-made law and the development of constitutional jurisprudence would come to a standstill. However, the doctrine of binding precedent could not be given a go-by. Quoting from Dr. Alan Paterson's *Law Lords* (pp.156-157), His Lordship referred to several criteria articulated by Lord Reid. It may be useful to reproduce herein the said principles:-

(1) The freedom granted by the 1966 Practice Statement ought to be exercised sparingly (the use sparingly criterion) (*Jones v. Secretary of State for Social Services*, 1972 AC 944, 966).

(2) A decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or settlements or otherwise regulated their affairs in reliance on the validity of that decision (the legitimate expectations criterion) (*Ross Smith v. Ross-Smith*, 1963 AC 280, 303 and *Indyka v. Indyka*, (1969) AC 33, 69).

(3) A decision concerning questions of construction of statutes or other documents ought not to be



overruled except in rare and exceptional cases (the construction criterion) (Jones case (supra)).

(4) (a) A decision ought not to be overruled if it would be impracticable for the Lords to foresee the consequence of departing from it (the unforeseeable consequences criterion) (Steadman v. Steadman, 1976 AC 536, 542C). (b) A decision ought not to be overruled if to do so would involve a change that ought to be part of a comprehensive reform of the law. Such changes are best done by legislation following on a wide survey of the whole field (the need for comprehensive reform criterion) (Myers v. DPP, 1965 AC 1001, 1022; Cassell & Co. Ltd. v. Broome, 1972 AC 1027, 1086; Haughton v. Smith, 1975 AC 476, 500).

(5) In the interest of certainty, a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step (the precedent merely wrong criterion) (Knulier v. DPP, 1973 AC 435, 455).

(6) A decision ought to be overruled if it causes such great uncertainty in practice that the parties advisers are unable to give any clear indication as to what the courts will hold the law to be (the rectification of uncertainty criterion), (Jones case (supra)); Oldendorff (E.L.) & Co. GmbH v. Tradax Export SA, 1974 AC 479, 533, 535: (1972) 3 All ER 420).

(7) A decision ought to be overruled if in relation to some broad issue or principle it is not considered just or in keeping with contemporary social conditions or modern conceptions of public policy (the unjust or outmoded criterion) (Jones case (supra)); Conway v. Rimmer, (1968) AC 910, 938).

10. Reference was also made to the doctrine of stare decisis. His Lordship observed by referring to Sher Singh v. State of Punjab, (1983) 2 SCC 344, that although the Court sits in Divisions of two and three Judges for the sake of convenience but it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three. To do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on points of law; consistency and certainty in the development of law and its contemporary status both would be immediate casualty.

11. In Raghubir Singh & Ors. case (supra), a Bench of two learned Judges had made a reference to a larger Bench for reconsideration of the questions decided earlier by two Division Benches of the quorum of two and three respectively. The Constitution Bench then opined that the matter could be heard by the Constitution Bench on such reference. It is pertinent to note that in Raghubir Singh & Ors. case the Constitution Bench has nowhere approved the practice and propriety of two-Judge Bench making a reference straightaway to Constitution Bench disagreeing with a three-Judge Bench decision. On the contrary, the Constitution Bench had itself felt inclined to hear the issue arising for decision and therefore did not think it to be necessary to refer the matter back to a Bench of three Judges. Similar was the situation in Union of India & Anr. v. Hansoli Devi & Ors., (2002) 7 SCC 273. Therein the Constitution Bench has reiterated the principle of judicial discipline and propriety demanding that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges and if a Bench of two learned Judges was inclined not to do so then the proper course for it to adopt would be (i) to refer the matter before it to a Bench of three learned Judges, and (ii) to set out the reasons why it could not agree with the earlier judgment. The Constitution Bench concluded, "then if the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect then a reference should be made to a Bench of five learned Judges". The Constitution Bench has very clearly concluded and recorded, "the very reference itself in the present case made by the two-Judge Bench was improper". However, the Constitution Bench then proceeded to observe that as the question involved had very wide implications affecting a large number of cases, it considered it appropriate to answer the questions referred instead of sending the matter back to a Bench of three Judges for consideration. The decision of this Court in Pradip Chandra Parija (supra) was followed. Thus, the course adopted by the Constitution Bench in the case of Hansoli Devi was by way of an exception and not a rule.

12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we



would like to sum up the legal position in the following terms:-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh & Ors.* and *Hansoli Devi & Ors.* (supra).

13. So far as the present case is concerned, there is no reference made by any Bench of any strength at any time for hearing by a larger Bench and doubting the correctness of the Constitution Bench decision in the case of *Sardar Syedna Taher Saifuddin Sahebs case* (supra). The order dated 18.3.1994 by two-Judge Bench cannot be construed as an Order of Reference. At no point of time the Chief Justice of India has directed the matter to be placed for hearing before a Constitution Bench or a Bench of seven-Judges.

14. In the facts and circumstances of this case, we are satisfied that the matter should be placed for hearing before a Constitution Bench (of five Judges) and not before a larger Bench of seven Judges. It is only if the Constitution Bench doubts the correctness of the law laid down in *Sardar Syedna Taher Saifuddin Sahebs case* (supra) that it may opine in favour of hearing by a larger Bench consisting of seven Judges or such other strength as the Chief Justice of India may in exercise of his power to frame a roster may deem fit to constitute.

15. Ordered accordingly.

I.A. No. 4 is disposed of.