2025 INSC 355

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3183 OF 2009

GANGUBAI RAGHUNATH AYARE …APPELLANT

VERSUS

GANGARAM SAKHARAM DHURI (D)
***THR.* LRs AND ORS. …RESPONDENTS**

GANGARAM SAKHARAM DHURI (D) *THR.* LRs (R1 to R8)

R1: ANANDI GANGARAM DHURI (D) *THR.* LRs (R2 to R8)

R2: SUNANDA GANGARAM DHURI

R3: VAISHALI VILAS MAJALKAR

R4: KAVITA KASHIRAM UGAVE

R5: VITHAL GANGARAM DHURI

R6: MANGESH GANGARAM DHURI

R7: BABAJI GANGARAM DHURI

R8: GEETA SUBHASH BARASKAR

R9: LAXMIBAI VISHNU SHELAR

LADUBAI MAHADEV RANE (D) *THR.* LRs (R10 to R13)

R10: HEMLATA ARJUN TAWDE

R11: PRATIBHA SAWANT

R12: SUPRIYA PAWAR

R13: SUNANDA RANE

R14: SHANTABAI MAHADEV AYARE (D)

R15: PUSHPA PRABHAKAR GUDEKAR (LR of R14)

R16: TAI SHANKAR PAWAR

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel and senior counsel appearing for the respective parties.

2. The present appeal is directed against the Final Judgment and Order dated 20/21.02.2007[1] in First Appeal No.116 of 1988 (hereinafter referred to as the 'Impugned Judgment') passed by a learned Single Judge (as he then was) of the High Court of Judicature at Bombay, reversing Judgment and Decree dated 18/19.09.1987 passed by the City Civil Court, Bombay (hereinafter referred to as the 'Trial Court') in Suit No.2060 of 1970.

3. At the outset, it is gainful to take note of the position of the contesting parties before the respective Courts, as under:

Name	Trial Court	High Court	This Court
Gangubai Raghunath Ayare	Plaintiff	Respondent No.1	Appellant
Gangaram Sakharam Dhuri	Defendant No.2	Appellants No.1-8 (Died - Represented by LRs[2])	Respondents No.1-8
Vishnu Shelar	Defendant No.1 (Died during pendency of the suit - Represented by	Respondent No.2	Respondent No.9

[1] **2007 SCC OnLine Bom 144** | **(2007) 5 Mah LJ 136** | **(2007) 5 Bom CR 306**.
[2] The abbreviation expands to Legal Representatives.

	his widow Laxmibai Vishnu Shelar)		
Ladubai Mahadev Rana	Defendant No.3	Respondent No.3 [Died - Represented by LRs 3(A) to 3(D)]	Respondents No.10-13
Shantabai Mahadev Ayare	Defendant No.4	Respondent No.4 [Died - Represented by LR 4(a)]	Respondents No.14 and 15
Tai Shankar Pawar	Defendant No.5	Respondent No.5	Respondent No.16
1 Defendant No.1 is the real brother of the Plaintiff and Defendants No.3-5. 2 Defendant No.2 is the purchaser as per the Sale Deed executed by Defendant No.1.			

FACTUAL SCENARIO:

4. For the sake of convenience, the parties are referred to as per their original status before the Trial Court.

5. The dispute in the suit pertains to property bearing C.T.S. No.1048 admeasuring 398.5 square yards altogether, with a building thereon by the name '*Sai Niwas*' situated at Bandra, Bombay – 50 (hereinafter referred to as the 'suit property').

6. One Gangaram Thakoji Shelar (hereinafter referred to as the 'deceased') was the exclusive owner of the suit property. The deceased passed away on 13.05.1967. At the time of his death, the deceased was

survived by his widow Sunderbai, his son Vishnu and four daughters namely, the Plaintiff and the third to fifth defendants, who were his only legal heirs and representatives.

7. The Plaintiff stated that the deceased was the absolute owner of the suit property. It is stated that one of the rooms i.e., Room No.1 in the suit property was let out to Raghunath Narayan Ayare, the Plaintiff's husband on a monthly rent of Rs.20/-. The Plaintiff, with her husband and her family members, have been occupying Room No.1, as tenant(s) thereof, during the lifetime of the deceased. It is stated that after the death of the deceased, Vishnu, being the only male member in the family and also the Plaintiff's and the third to fifth defendants' brother, started managing the affairs of and looking after the suit property.

8. The Plaintiff contends that her brother, Vishnu, had, in the course of management of the suit property, obtained her as well as her sisters' signatures, on some blank papers, including for the purpose of effecting transfer thereof in the public record in the names of all the legal heirs.

9. According to the Plaintiff, her husband received Letter dated 10.01.1969 sent to him by the second defendant alleging that the Plaintiff was in possession of Room No.1 in the suit property as a licensee of Vishnu. According to the Plaintiff, she learnt, for the first time, from the said Letter that Vishnu had sold ½ portion of the suit property to

the second defendant based on the Relinquishment Deed dated 11.12.1967, purportedly executed by the Plaintiff and the third to fifth defendants in favour of Vishnu. The plaintiff's husband replied to the said Letter by pointing out that he was a tenant in respect of Room No.1, and not a Licensee. It was contended in the reply that the Plaintiff, being one of the co-owners of the suit property, the transaction in favour of the second defendant by Vishnu was not binding on her.

10. The Plaintiff filed Suit No.2060 of 1970 for administration of the estate of the deceased seeking the following reliefs (sic):

> ‘*a) estate and life of the deceased be ascertained and thereafter the same be administered by and under the directions of this Hon'ble Court;*
> *b that the share of the plaintiff and the Original defendant Nos. 1 and 3 to 5 in the state of the said deceased be ascertained and declared.*
> *c that it be declared that the said sale deed 10th January 1969 executed by Original 1st defendant in favour of the 2nd defendant is null and void and not binding on the estate of the said deceased and/or plaintiff's share therein and that the 2nd defendant be decreed and ordered to deliver possession of ½ portion of the said property comprised in the said sale deed of the estate of the said deceased.*
> *d That for the purpose aforesaid enquiries be made, orders be passed and action be taken as may appear necessary of this Hon'ble Court in that behalf;*
> *e That the original and present 1st defend and their heirs be decreed and ordered to disclose of the estate of the said deceased and to account for his dealings with the said estate.*
> *f That pending the hearing and final disposal of the suit, Court Receiver, High Court, Bombay, be a pointed as Receiver of the said property viz. Sai Niwas, Bandra, Bombay 50, with all powers under order 40 and Rule 1 of the Civil Procedure Code.*

g This pending the hearing and final disposal of the suit present 1st defendant and 2nd defendant be restrained by an order of injunction of this Hon'ble Court in any manner to deal with, dispose of and/or alienating, transferring, encumbering the said property or any portion thereof.
h That an interim orders in terms of prayers above.
i That costs of and incidental to the suit be provided for.
j That for such further and other reliefs as the nature and circumstances of the case may require be granted.'

11. The Trial Court framed issues and found as below:

S. No.	Issues	Finding
1	Is the suit bad for misjoinder of parties and causes of action?	[Considered unnecessary]
2	Does the Plaintiff prove that the property sold under the Sale Deed dated 10.01.1969 by the original 1st defendant to the 2nd defendant form part of the estate of the deceased Gangaram Thakoji Shelar?	Yes
3	Does the Plaintiff prove that the Sale Deed dated 10.01.1969 is not binding upon the Plaintiff?	
4	Does the Plaintiff prove that the Sale Deed dated 10.01.1969 is null and void and illegal?	
5	Costs?	As per order

6	What Order?	

12. The Trial Court held that the suit for administration of property is not maintainable as the children of Vishnu, who died during the pendency of the suit, were not brought on record, and for ascertainment and administration of the estate and determination of the share and income etc., no issues were raised and no data was available. The Trial Court held that the Relinquishment Deed dated 11.12.1967 was not proved in accordance with law and the transfer in favour of the second defendant was null and void and was not binding on the Plaintiff. The suit was decreed declaring that the Sale Deed dated 10.01.1969 executed by Vishnu in favour of the second defendant was null and void and directing the second defendant to handover possession of ½ portion of the suit property, which was subject-matter of the Sale Deed in question. Further, the Trial Court also granted liberty to the Plaintiff to claim the other reliefs prayed for in the suit separately.

13. The Judgment/Decree of the Trial Court was assailed by the second defendant before the High Court in a First Appeal. The High Court allowed the appeal and held that the date on which the sale deed was executed by Vishnu, he had 1/6th undivided share in the property of the deceased. Though he had professed to sell ½ of the entire property, the Sale Deed would not become void or illegal only on that ground. The

High Court held that the purchaser under the Sale Deed would certainly get what Vishnu was entitled to transfer, namely, his undivided share in the suit property. It was held that the Sale Deed dated 10.01.1969 would be valid to the extent of the undivided 1/5th share of Vishnu and the finding of the Trial Court, that the Sale Deed was null and void, was set aside.

14. The High Court also opined that the Trial Court had passed a decree for possession against the second defendant which could not be done as the third to fifth defendants had not filed any suit nor paid any Court Fees on their claim regards possession of their share(s). As the share of the Plaintiff was only to the extent of 1/5th, ½ of the suit property could not be given to the Plaintiff.

15. The High Court went on to hold that once the Trial Court had found that the suit for administration of the deceased's estate was not maintainable, it could not have granted prayer (c) *supra*, claimed in the suit, which was in the nature of a consequential relief.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

16. Learned counsel for the Plaintiff submitted that Vishnu could not have sold in favour of the second defendant more than his share in the suit property. It was contended that, at best, he could have transferred

1/6th of the share, as on the date of the Sale Deed and 1/5th share after the demise of his mother.

17. It is submitted that as per Section 44[3] of the Transfer of Property Act, 1882, if at all the remedy for partition was to be availed, it was to be by the second defendant to demarcate his separate share, as acquired from Vishnu, and that the High Court had erred in holding otherwise. The Plaintiff, having a share in the property, correctly filed a suit for declaration and possession for recovery of the area in possession of the second defendant (Respondents No.1-8 herein), in excess of the entitlement.

18. It was urged that concurrent findings demonstrate that the second defendant/vendee was not a *bonafide* purchaser without notice and he, or his LRs, cannot be granted the benefit of pendency of the proceedings, which were instituted in the year 1970 i.e., immediately after the Sale Deed dated 10.01.1969 and, have been contested since then.

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[3] '***44. Transfer by one co-owner***.—*Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.*
Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.'

19. Furthermore, it was submitted that initially Vishnu was made party to the suit and after his death, his widow was impleaded, though his other legal heirs were not impleaded. However, that would not in any manner affect the suit since, as on the date when the suit was instituted, Vishnu had transferred his entire share in the suit property in favour of the second defendant. Hence, it was urged that the estate of Vishnu having passed onto the second defendant was represented in its entirety through the said party, who in any event, was the main contesting party. Our interference with the Impugned Judgment was, hence, sought by the Plaintiff.

SUBMISSIONS BY THE SECOND DEFENDANT'S LRS:

20. It was submitted, by learned senior counsel, that although Vishnu, while executing the Sale Deed had claimed to be the exclusive owner of the entire suit property, it is well-settled that an undivided share in a Hindu Undivided Family property can be transferred for valuable consideration by way of sale.

21. It was advanced that the Plaintiff cannot seek the relief to obtain a separate share in the property in question, in a suit for administration of an estate, and such relief can be granted only in a properly-instituted partition suit.

22. Lastly, it was contended that the second defendant's LRs were ready and willing to pay whatever reasonable amount that this Court may direct, or in the alternative, pay 6% simple interest from 10.01.1969 till date on the original consideration or a lump-sum amount of Rupees 15,00,000/- (Rupees Fifteen Lakhs), which is a fair offer, if one considers that the equities, as on date, are in their favour, as the Plaintiff has failed before the High Court.

ANALYSIS, REASONING AND CONCLUSION:

23. We are of the firm opinion that the High Court rightly reversed the finding of the Trial Court which set aside the Sale Deed dated 10.01.1969 in favour of the second defendant by Vishnu *in toto*, inasmuch as Vishnu had 1/5th undivided share in the suit property, belonging to the deceased. The High Court has also rightly set aside the decree of possession against the second defendant, as the said relief was incapable of being granted by reason of the fact that the third to fifth defendants had not filed any suit in this behalf, whilst the Plaintiff herself was entitled only to a 1/5th share in the suit property. The suit, as filed by the Plaintiff, sought administration of the deceased's estate, with the ancillary prayer being to ascertain the share of the Plaintiff and the original defendants no.1 and 3 to 5 in the suit property.

24. We accord our *imprimatur* to the conclusion drawn by the High Court that when the principal prayer for administration of the estate was rejected by the Trial Court, that too as non-maintainable, any other prayer which indirectly seeks partition cannot be granted, until the proper parties are impleaded in the suit. As noted hereinbefore, the third to fifth defendants, who are the Plaintiff's sisters, have not filed any suit seeking their share in the suit property. Specifically, on the facts of this case, on the passing away of Vishnu, during the pendency of the suit, only his wife was brought on record, whereas his sons and daughters were not impleaded into the suit by the Plaintiff. In the case of ***Chief Conservator of Forests, Government of Andhra Pradesh v Collector*****, (2003) 3 SCC 472**, the Court explained, through Hon. Quadri, J.:

> '***12.*** *It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC*[4]

[4] '***9. Misjoinder and non-joinder***.—*No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:*

mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.'

(emphasis supplied)

25. In the decision rendered in ***Bachhaj Nahar v Nilima Mandal*****, (2008) 17 SCC 491**, the Court, speaking through Hon'ble Raveendran, J., held:

'***23.***[5] *It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.*'

(emphasis supplied)

Provided that nothing in this rule shall apply to non-joinder of a necessary party.'

[5] Para 23 of ***Bachhaj Nahar*** (*supra*) was corrected *vide* Official Corrigendum No.F.3/Ed.B.J./89/2009 dated 17.07.2009.

26. In view of the reasons stated above, this Court directs that the Plaintiff cannot be disturbed with her possession until the suit property is partitioned in accordance with law. The second defendant shall only have 1/5th share in the suit property, which fell to Vishnu on the demise of the deceased, as the Sale Deed dated 10.01.1969 in favour of the second defendant by Vishnu is held valid only to such extent.

27. Considering the passage of time of half a century and the current scenario where parties are represented through their legal heirs, the Trial Court concerned shall positively endeavour to decide the partition suit, if so filed, within three months from the date of filing thereof, in terms of the liberty granted hereinabove.

28. This Court, while granting leave on 01.05.2009, ordered that '*Until further orders, it is directed that subject matter of dispute shall not be alienated by any of the parties.*' As the said Order has continued for over a decade and a half, in the interest of justice, there shall be *status quo* in the said terms, till the time the suit property is partitioned as per law.

29. The Civil Appeal is disposed of, with the aforesaid observations and directions. Costs made easy.

30. I.A. No.14513/2022 is an application to '*Condone the delay of 916 days & Setting aside abatement in filing the Application to bring on*

Record the LRs of Deceased Respondent No. 1'[6] (sic). I.A. No.72967/2021 is an application to '*Allow the present application to bring on record the Legal Representatives of the deceased Respondent No.1 who are already on record in the present appeal as Respondents No.2-8 as mentioned in paragraph 3 of the present application*'[7] (sic). Considering that the LRs to be brought on record are already arrayed as parties to this appeal, both the I.A.s are allowed, thereby condoning the delay, setting aside the abatement, and bringing the said LRs on record on behalf of the first respondent herein, who passed away on 28.09.2018, as per the Death Certificate dated 01.02.2021 issued by the Municipal Corporation of Greater Mumbai.

……., J.
[SUDHANSHU DHULIA]

……., J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MARCH 17, 2025

[6] Party description is as per this appeal.
[7] *Ibid*.