IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 140 of 2015
Pandurang and ors v. Tulshiram

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr Amol Deshpande, Adv for appellants
Mr A. R. Deshpande,Adv for respondent

CORAM : A. V. NIRGUDE, J

DATED : 22nd April 2015

1. Heard learned counsel for the parties. This appeal challenges concurrent findings of the Courts below that the respondent/plaintiff has not only a title, but is also entitled to possession. The Courts below also held that the appellants did not have any title to the suit property.

2. The suit property originally belonged to one Vithuji who made a Will. By this Will, he created life interest in favour of his wife Yamabai and after her death, the property would stand bequeathed to respondent Tulshiram. There is no dispute between the parties in respect of genuineness of Will of Vithuji. During the life-time of Yamabai, apparently, did not want the suit property to go to Tulshiram after her death and, therefore, she created number of obstacles for Tulshiram to overcome. Tulshiram fought legal battle for about 25 years since 1974. Ultimately,

Yamabai died in 2004 and Tulshiram then claimed title to the suit property and filed this suit for possession. Appellants/defendants claimed title to the suit property. They claimed title through Yamabai. The Courts below held that Yamabai had no authority to deal with the suit property and, therefore, possession of appellants/defendants was held to be unauthorized as against the respondent/plaintiff.

3. Learned counsel for the appellants placed reliance on Section 31 of the Specific Relief Act. He argued that the suit was not maintainable because respondent/plaintiff did not seek cancellation of document through which Yamabai created title in favour of his clients. Indeed, respondent/plaintiff could have sought cancellation of document execute by Yamabai during her life time in order to his his title clear. However, the facts of this case would indicate that Yamabai had no authority whatsoever to deal with the property in the manner in which she dealt with it. She had only life-time interest and, therefore, persons claiming through her would be able to enjoy her property only during her life-time. She could not have sold suit property to anyone. Such sale, if at all there be any, is *void ab initio*. When Yamabai died in 2004, respondent/plaintiff became interested in the suit property because at that moment he got title to the suit property. The document which created title in his favour, was Vithuji's Will. Vithuji in clear terms prohibited his wife Yamabai from creating any third-

party interest in the property. So, if at all Yamabai against the wish of her testator created such interest in favour of any party, such was was patently unauthorized one. It would neither affect the title of the legatee nor the legatee is required to seek declaration of cancellation. The facts of this case would not bring the provisions of Section 31 of the Specific Relief Act in operation since the suit was simplicitor for possession on the basis of title. The title flew from the Will. Whoever is interested in any adverse title, was under obligation to either seek declaration that the Will was bad or otherwise, he is a *bona fide* purchaser. So, the entire burden to prove title was on the appellants. Submission based on Section 3 of the Specific Relief Act is futile argument and deserves to be rejected.

4. The appeal does not give rise to any substantial question of law. Second Appeal stands dismissed accordingly. No costs.

JUDGE

joshi