

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

SECOND APPEAL NO.339/2013

Shri Hemraj s/o Beniramji Ghate through L.Rs. and others

..Versus..

Shri Daulat w/o Tukaram Chakole and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 21.11.2015

Heard Shri S.D. Deshpande, advocate for the appellants,
Shri A.Z. Jibhkate, advocate for respondent no.1, Shri P.K.
Mishra, advocate for respondents 9(1) to 9(4) and Shri K.B.
Ambilwade, advocate for respondent no.4.

The following substantial questions of law arise for
consideration:

(1) Whether the respondents 1, 2-A and 2-B/original plaintiffs can claim decree for partition and possession of 1/7th share in the suit land on the basis of the sale deed executed by Vitthal and Vishwanath in their favour, when the sale deed executed by Beniram in favour of Vitthal and Vishwanath in 1954 has been held to be invalid

by the Hon'ble Supreme Court in the judgment given in Civil Appeal No.380(N) of 1980 ?

(2) Whether the leave granted by this Court to the alienees to file separate suit for partition and possession, as per the judgment given in First Appeal No.117/1968 enables the respondents 1, 2-A and 2-B/original plaintiffs to file the civil suit, though the judgment passed by this Court in First Appeal No.117/1968 has merged in the judgment given by the Hon'ble Supreme Court in the Civil Appeal No.380(N) of 1980 ?

ADMIT.

Shri A.Z. Jibhkate, advocate waives notice for respondent no.1.

Shri P.K. Mishra, advocate waives notice for respondents 9(1) to 9(4).

Shri K.B. Ambilwade, advocate waives notice for respondent no.4.

The appellants shall file private paper book and decree forms within six months.

C.A.S. NO.713/2013.

According to the respondents, the suit land was in

possession of the respondents 1, 2-A and 2-B/original plaintiffs after they purchased it by the sale deed of 1995. According to the respondents, they lost the possession of the suit land in 1999 in execution of the decree in favour of the appellants. The appellants claim that they are in possession of the suit land. Considering the facts of the case, there shall be stay to the execution of the decree passed by the subordinate Courts.

Shri A.Z. Jibhkate, advocate submits that there is concurrent findings by the subordinate Courts in favour of the respondents 1, 2-A and 2-B. It is further submitted that the appellants have got the agricultural land converted into non-agricultural land and some plots have been sold and the appellants are intending to dispose of the remaining plots.

Shri S.D. Deshpande, advocate submits that the land is still used for agricultural purposes and it is not converted for non-agricultural user.

Considering the facts of the case, specially that the subordinate Courts have concurrently recorded the finding

regarding the possession of the suit land with the respondents 1, 2-A and 2-B and accepting the statement made on behalf of the appellants, it is directed that the appellants shall not create any third party rights and interests in the suit land and the appellants shall not change the user of the land and maintain *status quo* in respect of the land, as on today. It is further clarified that if the appellants have already parted with the possession of some portion of the land, the status of land shall not be permitted to be changed without orders of this Court.

The appellants shall intimate about this order to the persons to whom they have assigned the interests in the suit land.

The civil application is disposed of in the above terms.

JUDGE