

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

SECOND APPEAL NO.378 OF 2012

(SARASWATABAI SANTOSH HATILE & ANR..VS..JAITURABAI CHHAGANLAL TANDEKAR & OTH.)

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.

DATED : OCTOBER 20, 2015.

Heard Shri S.R.Bhongade, learned advocate for the appellants and Shri D.V. Mahajan, learned advocate for the respondent No.7. None appears for the other respondents.

2. Shri Chhaganlal Tandekar (father of the appellants) suffered decree for specific performance of agreement, passed in Regular Civil Suit No. 45 of 1992. The judgment and decree was confirmed by the District Court and this Court.

3. The appellants filed Regular Civil Suit No.36 of 2006 contending that the property, in respect of which the decree for specific performance has been passed in Regular Civil Suit No. 45 of 1992, is an ancestral property and the appellants are entitled for their share. The appellants contended that the judgment and decree passed in Regular Civil Suit No. 45 of 1992 was not binding on them as they were not party to the said suit. The appellants prayed for decree for declaration, partition and separate possession of their share in the suit property.

4. Shri Bhongade, learned advocate has submitted that the subordinate Courts have not dealt with the challenges raised by the appellants that the judgment and decree passed in Regular Civil Suit No. 45 of 1992 is not binding on the appellants.

The learned advocate for the appellants has submitted that the subordinate Courts have not taken into consideration the relevant evidence led by the appellants. The learned advocate has relied on the evidence of witness Nos. 2, 4 and 5 examined on behalf of the appellants.

5. The subordinate Courts have concurrently recorded the findings that the appellants have failed to prove that the suit property is ancestral property. The appellants have not been able to point out any perversity in the findings recorded by the subordinate Courts.

The learned trial Judge has considered the evidence of the witnesses exhaustively in paragraph Nos. 7 to 13. The submissions made on behalf of the appellants that the relevant evidence has not been considered, is not correct. In view of the findings recorded by the subordinate courts that the appellants have failed to prove that the suit property is ancestral property, the prayer made on behalf of the appellants for decree for declaration is not required to be considered in details.

6. The subordinate Courts have dealt with all the relevant aspects and have recorded the findings which do not require any interference by this Court. The evidence cannot be re-appreciated as the appellants have not been able to

point out any perversity in the appreciation of the evidence by the subordinate Courts. The appeal does not raise any substantial question of law, which is required to be considered by this Court under Section 100 of the Code of Civil Procedure, 1908.

The appeal is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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