

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 96 OF 2014

Arunsingh Chatarsingh Rajput Vs. Sulochanabai Damodar Amle & Ors.

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

Court's or Judge's Order

Shri A. V. Bhide, Adv for appellant.
Shri H. S. Chitaley Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: 14 JANUARY, 2015.

Heard. Challenge in the second appeal is to the decree passed by the trial Court as affirmed by the first appellate Court.

Suit for declaration that the defendant had no concern with 3 acres 20 ares of land from Gat No. 510 and for perpetual injunction was filed by the plaintiffs. According to plaintiffs they had become owners by virtue of four sale deeds dated 06.12.1997. On obstruction being caused by the defendant aforesaid suit came to be filed. According to the defendant his father had executed a Will in

his favour on 17.09.1973. His further case is that plaintiff's vendors had no title to execute sale deed dated 06.12.1997. The trial Court on consideration of evidence on record found that plaintiffs had proved their title. It was further found that plaintiffs were in possession of the suit property. It disbelieved the defence as raised and decreed the suit. The first appellate Court after re-appreciating the evidence affirmed said judgment.

Shri A. V. Bhide, learned counsel for the appellant submitted that the plaintiff's vendors namely Chandrapalsing and Mangalsing had no title for passing the same on to the plaintiffs. He submitted that by virtue of Will executed by his father he had become owner of the suit property. He, therefore, submitted that merely on the basis of mutation entries the title of the plaintiffs could not have been held to be proved.

On the other hand Shri H. S. Chitaley, the learned counsel for the respondents supported the impugned decree. Perusal of the impugned judgments indicate that both the Courts have taken into account the entire evidence while

disbelieving the defence set up by the defendant. It has been found that the defendant was an attesting witness on the four sale deeds that were executed on 06.12.1997. The appellate Court in para 31 of its judgment held that the defendant had admitted the ownership and possession of the plaintiffs vendors in an affidavit filed in Special Civil Suit No. 88 of 1998. It further found that the plaintiffs vendors had obtained loan from the bank which was subsequently repaid by the plaintiffs. In this background the suit as filed came to be decreed. It is to be noted that there was no counter claim filed challenging aforesaid sale deeds.

In view of aforesaid, it cannot be said that the findings as recorded are either perverse or that the same give rise to any substantial questions of law. Hence, second appeal is dismissed with no order as to costs. Civil Application No. 159 of 2014 consequently stands disposed of.

JUDGE