

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

SECOND APPEAL NO.350 OF 2013

Raghunath S/o Bhamji Tandle
Vs.
Ramnath Bhavji Tandle & Anr.

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

Court's or Judge's Order

Shri P.S. Kshirsagar, Advocate for appellant.
Shri Rahul Tajne, Advocate for respondent No.
1.

CORAM: A. S. CHANDURKAR J.

DATED: JANUARY 21, 2015.

The appellant-original plaintiff challenges the judgment passed by the trial Court dismissing the suit for partition that has been affirmed by the first appellate Court.

The plaintiff and defendants are brothers. According to plaintiff, suit property consisting of house situated on Plot No.251 was joint family property. He therefore filed suit for partition and separate possession. The defendants took the stand that in the year 1984, there was a partition which was subsequently reduced to writing on 23/05/1984. Said

partition was acted upon by the parties and hence the suit as filed was not tenable.

The trial Court on the basis of the evidence on record found that after aforesaid partition took place, the defendant No.2 had sold the area allotted to him in the partition in favour of defendant No.1. It also found that the plaintiff was running a shop on the portion allotted to him. It was also held that as the plaintiff was aware of aforesaid partition in the year 1984, the suit as filed in the year 2002 was barred by limitation. The trial Court therefore dismissed the suit.

The first appellate Court after re-appreciating the evidence, affirmed the aforesaid findings.

Shri P. S. Kshirsagar, learned counsel for the appellant submitted that the document of partition was not duly stamped and hence the same was not exhibited in the trial. However, despite aforesaid, the suit came to be dismissed.

Shri Rahul Tajne, learned counsel for the respondents supported the impugned judgment.

On perusal of the impugned judgment, it is clear that both the Courts have taken into account the entire evidence that was available on record. Though

the deed of partition was not found to be adequately stamped, on the basis of various other circumstances which indicated that the parties had acted on the partition, the suit came to be dismissed. Moreover, there is no explanation for filing the suit in the year 2002 though the shares were allotted in the year 1984.

It is therefore clear that no substantial question of law arises in the second appeal, same stands dismissed with no order as to costs.

JUDGE

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