

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908. SA/183/2016

**SOPAN S/O RANGNATH SHINDE
& ORS.**

V/S

SADASHIV SAKHARAM SHINDE

.....

Mr.M.R.Deshmukh, Advocate for Appellants.

Mr.B.R.Kedar, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 4th MAY, 2016

ORDER :-

. The Appeal is filed to challenge the Judgment and Decree of R.C.S. No. 30/2010 which was pending in the Court of the Civil Judge [Jr. Division], Jafrabad, district Jalna and also the Judgment and Decree of R.C.A. No. 85/2013 which was pending in the Court of the Ad-hoc District Judge - 1, Jalna. The Suit filed by present respondent Sadashiv for relief of possession of agricultural land is decided in his favour and the first appellate Court has modified the Judgment and Decree to some extent to give liberty to the defendant to stop the supply of water for irrigation purpose to the plaintiff. Both sides are heard.

2. The Suit was filed in respect of 60 R. portion of land G.No. 49 situated at village Pokhari, Tahsil Jafrabad, district Jalna. Plaintiff and defendant No. 2 are step brothers interse and defendant No. 1 is son of defendant No. 2. Partition took place between plaintiff and defendant No. 2 in the year 1971-72 and in the partition G.No. 49 came to the share of plaintiff.

3. It is the case of the plaintiff that in the year 1990, there was agreement between plaintiff and defendant No. 2 and under the agreement defendant No. 2 agreed to give 50 % share in the water of well situated in land G.No. 50 of defendant No. 2 and in lieu of that, plaintiff agreed to give 60 R. portion, the suit property, to defendant No. 2. It is contended that the possession of the suit property was actually handed over to the defendant No. 2, but defendant No. 2 avoided to give 50 % share in the water of the well. It is contended that as the possession of the defendant is permissive and as the plaintiff is still the owner, he is entitled to get back the possession.

4. Defendants filed Written Statement and contested the matter. They admitted that G.No. 49 was allotted in the share of plaintiff in the partition. They also admitted that under one agreement, suit property was given in possession of defendant No. 2 but they denied that 50 % share was given in the water of well. They contended that only one Ana share was given. It is contended that under the agreement which was shown as partition, the property was given to the defendants and mutation was also made on the

basis of such agreement and so plaintiff can not get such relief.

5. On the basis of aforesaid pleadings, issues were framed. Both sides gave evidence. The defendants mainly relied on copy of mutation which was made on the basis of the so called agreement. It is not disputed that land G.No. 49 was allotted to the share of plaintiff in the partition and so he was the owner. If at all there was some agreement as contended, as the agreement involved transfer of ownership in the suit property, it was necessary for the parties to pay stamp duty under the provisions of Bombay Stamp Act and also to register the transaction as required by the Transfer of Property Act and Indian Registration Act. Such procedure was not followed and so no title has passed to the defendants in respect of the suit property. There is dispute about the right of plaintiff to take the particular portion of water in the well belonging to the defendants and so it can be said that the parties do not want to act as per the agreement made by them which is not produced on record. In view of the aforesaid nature of pleadings and admitted facts, it was not possible for the defendants to protect the possession. The Suit was filed for possession on the basis of title and the title is still with the plaintiff. On the basis of the aforesaid pleadings and the admitted facts, the decree is given by the Courts below in favour of the plaintiff and the findings are on question of facts. In view of the above, this Court holds that no substantial question of law as such is involved in the matter.

6. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 9205 of 2015 does not survive and stands disposed of.

[T.V.NALAWADE, J.]

KNP/S.A. 183.2016.odt