

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

SECOND APPEAL NO.477 OF 2014

PANDURANG S/O CHANDRABHAN MORE

VS

KACHRU S/O UKANDA SAKHARE & OTHERS

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

Court's or Judge's orders

Shri A. S. Agrawal Advocate h/f Shri P. B. Patil, Advocate for the
appellant.
Shri R. N. Ghuge, Advocate for respondent Nos.1 to 3.

CORAM : A.S. CHANDURKAR, J.
DATED : APRIL 21, 2016.

1. The original plaintiff is aggrieved by the judgment of the appellate Court thereby allowing the appeal filed by the present respondents and dismissing the suit filed by the appellant for permanent injunction that he had a 1/3rd right to fetch water from the well situated in Gut No.106.

2. According to the appellant, by virtue of a sale deed dated 18-3-1985 Gut No.105 was purchased by him for consideration of Rs.2000/-. However, the description of the property purchased was wrongly mentioned as Gut No.107. It is the case of the appellant that he had 1/3rd share in the well situated in Gut No.106 that was owned by the respondents. Since the date of the sale deed till 24-11-2003, the appellant was drawing water from the said well. However, on being obstructed the present suit came to be filed.

3. The trial Court by observing that in the sale deed dated 18-3-1985 it was mentioned that the plaintiff had 1/3rd share in the well situated in Gut No.106 decreed the suit. The appellate Court reversed the decree on the ground that it was clearly mentioned in the said sale deed that the appellant had 1/3rd share in the well situated in Gut No.107.

4. The learned Counsel for the appellant submitted that as there was no well in Gut No.107 and the same was situated in Gut No.106, the trial Court was justified in decreeing the suit in favour of the appellant. It was submitted that the respondents had never challenged the sale deed in question and it was their defence that it was a nominal document. He, therefore, submitted that the decree passed by the trial Court deserves to be restored.

5. The learned Counsel for the respondents supported the impugned judgment. It was submitted that considering the recitals made in the sale deed dated 18-3-1985, the appellant had no right in the well situated in Gut No.106.

6. The sale deed dated 18-3-1985 is at Exhibit-48. Perusal of the same indicates that there is reference to 1/3rd share in the well at Gut No.107. Admittedly, the well is situated in Gut No.106 which belongs to the defendants. Though initially certain revenue entries were taken indicating the right in the said well in Gut No.106, these entries have been subsequently set aside. Thus, on plain reading of the sale deed at Exhibit-48, it is clear that there is no reference to any share in the well situated in Gut No.106. The appellate Court after considering this document has allowed the appeal filed by the respondents. It, therefore, cannot be said that the view as taken by the appellate Court is contrary to the evidence on record.

7. No substantial question of law arises for consideration. The appeal is, therefore, dismissed. No costs.

JUDGE

/MULEY/