

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

Second Appeal No.195 of 2014
(Shri Suresh Rajaramji Khasbage v. Shri Prakash Rajaramji Khasbage)

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

Shri A.R. Ingole, Advocate for Appellant.
Shri M.A. Qureshi, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 6th June, 2016

The Trial Court passed a decree on 2-1-2009 in Regular Civil Suit No.84 of 1997 granting a declaration that the plaintiff and his brother Bhaurao became owners of Gat No.197/2, situated at Warud, District Amravati, by virtue of partition-deed at Exhibit 44. The defendant was restrained permanently from obstructing the possession of the plaintiff over the suit property.

In Regular Civil Appeal No.36 of 2009, the lower Appellate Court has set aside the decision of the Trial Court by its judgment and order dated 3-3-2014 and the suit filed has been dismissed. The original plaintiff is, therefore, before this Court in this second appeal.

The undisputed factual position is that Bhaurao, the real brother of the plaintiff and the defendant, was retarded and

hence in the absence of the permission from the Court, the partition at Exhibit 44 could not have been accepted by the Trial Court. The contention of the respondent is that the partition-deed at Exhibit 44, which is an unregistered document, also does not bear his signature. In such a situation, the lower Appellate Court has held that the Trial Court has ignored the fact that Bhaurao was mentally retarded and he could not have been represented by anybody for executing partition without appointment of guardian by the Court. It has further held that hence the property remains joint property and in case of joint family property, possession of one co-sharer is always on behalf of all.

Thus, no substantial question of law is involved in this second appeal. The second appeal is dismissed.

Needless to say that the parties are at liberty to file appropriate suit for partition and separate possession.

Judge.

Lanjewar