

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

SECOND APPEAL NO.338/2011

(State of Maharashtra through Collector, Wardha ..vs.. Smt. Kanchan wd/o
Madhukar Salodkar and ors.

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

Court's or Judge's orders.

Mrs. Rashi Deshpande, A.G.P. for appellant.
Mr. S. P. Kshirsagar, Advocate for respondents.

CORAM : A. B. CHAUDHARI, J.
DATE : MARCH 18, 2016

This appeal was filed in the year 2011 and remained pending for admission. On 10th July, 2015, this Court made the following order:

“Admit. Call R & P.

Appeal itself should be heard finally. Appeal be listed along with R & P.”

Pursuant to the order, the record has been received. It is true that no substantial question of law was framed when this appeal was admitted. However, after perusal of the record and after hearing learned counsel for rival parties, I frame the following substantial question of law:

“Whether both the Courts below have committed any perversity in decreeing the suit filed by the respondent-plaintiff as to their ownership over field survey No.35/1 and 35/2 of Mouja Tulana, Tq. Karanja, Dist. Wardha and ordering State to hand over the possession of the above fields to the plaintiff?No.

It is clear from the record that the plaintiff no.2-Ravindra examined himself and deposed about his case including the ownership. Exh.-20 is a document relating to the year 1909-10, which records the ownership of Narayan Anant Brahman, Ajandoh Nambardar to the survey no.35, area 6.54, in accordance with the Jamabandi. This document is a clinching evidence and has high probative value to find out the ownership of Narayan Anant Brahman, the predecessor of the plaintiff. The appellant-State could have, by appropriate evidence, rebutted the high evidentiary value of this document Exh.-20 but then the appellant-State did not bring any evidence in rebuttal before the Court and, on the contrary, their witness Chandrakant Chimote, who was examined at Exh.-41, did not bother to report for cross-examination after recording his examination-in-chief. Thus, Before the Court, therefore, there was an evidence in the form of Exh.-20 and some other documents and oral evidence of the plaintiff as against that the appellant-State, which preferred to remain

away from the Court. It appears from the perusal of the record that the officer-Chandrakant Chimote simply filed his affidavit-evidence at Exh.-41 on 21.11.2005 and thereafter never returned back to the Court to prove his case which shows that he was highly irresponsible in doing his duty to the State.

The sub division of field survey no.35 appears to have given right to the Forest Department in the beginning to claim the ownership as Zudupi Jungle and that is why it appears that the Sub Divisional Officer passed some order, that too without issuing notice to the owners. The evidence of Ravindra (PW1) practically went unchallenged on the material particulars so also his document namely; Exh.-18-Patwari map, Exh.-19-Jamabandi map, Exh.-20-Bandobast Misal, about which I have already mentioned. Per contra, the State Government did not prove any document to the contrary.

In that view of the matter, I think, both the Courts have not made any mistake nor the evidence recorded by them can be said to be perverse particularly in the light of the documents of the year 1909-10 having very high probative value recording the name of Narayan Anant Brahman as owner of the property, the substantial question, therefore, is answered in the negative.

In view of above, following order is passed.

ORDER

- (i) Second Appeal No.338/2011 is dismissed.
- (ii) The appellant-State is directed to hand over the possession of the suit field as per judgment and decree dated 12.09.2004 in Regular Civil Suit No.329/2003 passed by the Civil Judge (Sr. Dn.) Wardha within a period of one month from today, failing which the appellant-State will have to pay costs in the sum of Rs.25,000/- (Rs. Twenty Five Thousand Only) to the respondents.

JUDGE

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