

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

Second Appeal No.57 of 2015
(Ramchandra s/o Natha Pawar and others v. Sahebrao s/o Shivnarayan
Deshmukh)

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

Shri V.G. Wankhede, Advocate for Appellants.
Ms Naziya Pathan, Advocate, holding for Smt. R.S. Sirpurkar,
Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 8th June, 2016

Regular Civil Suit No.65 of 2006 filed by the respondent/plaintiff was dismissed by the Trial Court on 15-4-2010. It was a suit for permanent injunction restraining the appellants/defendants from disturbing the possession of the plaintiff over the suit property and for declaration that the plaintiff is the owner of the suit property on the basis of the registered sale-deed dated 3-3-2006 executed by Smt. Chandrabhagabai. The lower Appellate Court has set aside the decision of the Trial Court on 1-2-2014 in Regular Civil Suit No.60 of 2010 and the suit has been decreed in favour of the plaintiff. Hence, the original defendants are before this Court in this second appeal.

The question before the Courts below was regarding title

of Smt. Chandrabhagabai over the suit property, as the plaintiff has derived his title from Smt. Chandrabhagabai on the basis of the registered sale-deed dated 3-3-2006. The original owner was one Tulshiram, who had married with Janabai. The lower Appellate Court has relied upon the evidence of the witnesses examined by the appellants/defendants to record the finding that Smt. Chandrabhagabai was the wife of Tulshiram. The relevant portion is contained in paras 17 and 18 of the judgment of the lower Appellate Court, which are reproduced below :

“17. I have carefully perused the evidence of plaintiff and his witnesses. It is proved that Chandrabhagabai and Tulshiram has resided together as husband and wife. The evidence of plaintiff is sufficient to prove the fact that Chandrabhagabai is the wife of Tulshiram. Plaintiff discharged burden shifted on him. Defendants came with the case that Chandrabhagabai is a keep of Tulshiram. Tulshiram got married with Janabai, I have carefully perused the evidence of defendant No.1. He has not deposed a single word that Janabai is wife of Tulshiram. Such a material fact has not been pleaded in written statement. Defendant's witnesses D.W.2 Tukaram Ambhore, D.W.3 Nayabrao Pawar and D.W.4 Dinkar Ambhore deposed that Tulshiram got married with Janabai, resident of Belgaon. Such a fact has been denied

by plaintiff by putting suggestion.”

“18. Defendants witness D.W. 2 Tukaram has specifically admitted while cross-examination that Janabai was the first wife of Tulshiram. They have divorced with each other. Janabai got remarried, he do not know as to whether Tulshiram was remarried or not. He further deposed that, if Tulshiram would have got married then Tulshiram would have call him for marriage. The admissions given by the defendants witness D.W.2 Tukara, make it clear that the marriage between Janabai and Tulshiram was dissolved by divorce. Defendants witness also admitted that Chandrabhagabai resided with Tulshiram. He do not know as to whether Chandrabhagabai got married with Tulshiram or not. This witness did not disclose that Chandrabhagabai did not get marry with Tulshiram. The evidence of defendants and their witnesses does not appear to be trustworthy and reliable. On the contrary, the evidence of plaintiff and his witnesses is sufficient to prove that Tulshiram and Janabai resided together as husband and wife. I conclude that Chandrabhagabai is the wife of Tulshiram. She got married with Tulshiram dissolution of alleged marriage between Tulshiram and Janabai. I answer point no.1 in the affirmative.”

The witnesses of the appellants/defendants have admitted that there was a divorce between Tulshiram and Janabai, and Tulshiram was residing with Smt. Chandrabhagabai for a long time, which raises a presumption of a valid marriage subsisting between them. The Trial Court found that Smt. Chandrabhagabai was in possession of the suit property and the appellants/defendants have failed to establish their possession over the suit property.

In view of the position of law, no substantial question of law arises in the present second appeal, which is dismissed.

Judge.

Lanjewar