

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

SECOND APPEAL NO.367/2015

(Punjabrao s/o Sitaram Fulzele ..vs.. Bansilal s/o Sitaram Fulzele)

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

Court's or Judge's orders.

Mr. R. D. Bhuibhar, Advocate for appellant.
Mr. S. O. Ahmed, Advocate for respondent.

CORAM : A. B. CHAUDHARI, J.
DATE : FEBRUARY 26, 2016

Heard learned counsel for the parties.
Perused the impugned order.

Learned counsel for the appellant contended that the grant of plot in Buddha Nagar in the name of Sitaram Fulzele by the Government in lieu of acquisition of his house in Hansapuri by Nagpur Improvement Trust was exclusively in the name of Sitaram. Therefore, the appellant has become the exclusive owner thereof because the appellant had a will in his favour from Sitaram.

The crucial issue in the case is; whether the property in Hansapuri area was an ancestral property of Sitaram or self acquired property. The issue obviously arose because the respondent contested by saying that he was equally interested in the property as it was an ancestral property. Consequently, Sitaram could not have executed the

Will exclusively in favour of the appellant-plaintiff. In this connection, the lower appellate Court observed thus:

“12. Defendant has submitted that it is the plaintiff who has to prove that suit property was the self acquired property of Sitaram Fulzele. From the perusal of evidence and pleadings it appears that plaintiff has not brought evidence on record to show that suit plot is self acquired property of Sitaram Fulzele. In the Will it is mentioned that suit plot was granted in favour of Sitaram Fulzele by the Nazul Department, in exchange of acquisition of house at Panchpaoli. Therefore, plaintiff should have brought the evidence to show that house at Panchpaoli was self acquired property of Sitaram Fulzele. However, except the pleading, plaintiff has not brought evidence to that effect. On the other hand defendant has stated that house at Panchpaoli was the ancestral property and Sitaram was not absolute owner. To support his contention advocate for defendant took me through the cross examination of the plaintiff. In the cross examination plaintiff has admitted that initially suit plot was allotted in the name of Sitaram Fulzele and his brother Laxman Fulzele. The P.W. No.2 Keshav Gajbhiye, who is working

in the Nagpur Municipal Corporation has deposed that previously suit plot was allotted in the name of Sitaram and his brother Laxman Fulzele and subsequently Nazul Department allotted separate plot to Laxman Fulzele and then only name of Laxman got removed as a co-owner of the suit plot. In the cross examination plaintiff has admitted that he did not try to get old record of house at Panchpaoli.”

Perusal of the above finding clearly shows that the burden to prove that the property was not ancestral property or was self acquired property of Sitaram was on the appellant-plaintiff and he failed to discharge it. It is because of the failure on his part to discharge the factual burden of proof, the plaintiff could not succeed in the Courts below and, in my opinion, rightly so.

In that view of the matter, I find that there is no occasion for me to interfere in the concurrent findings of facts recorded by two courts below.

ORDER

(i) Second Appeal No. 367/2015 is dismissed summarily.

JUDGE