

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

Second Appeal No.38 of 2013
(Smt. Udabai w/o Sumeri Sahala and others v. Darel s/o Dulasing Bhaisa)

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

Shri Rohit Joshi, Advocate for Appellants.
Shri A.M. Quazi, Advocate for Respondent No.1.

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

The Trial Court passed a decree for possession of the suit property on 23-1-2007 in Regular Civil Suit No.102 of 1999. The lower Appellate Court has dismissed Regular Civil Suit No.40 of 2007 on 6-10-2012. Hence, the original defendant Nos.1 to 3 are before this Court in this second appeal against the concurrent findings of fact.

Shri Joshi, the learned counsel appearing for the appellants, has invited my attention to the deposition of the plaintiff, wherein he has stated that it is true that there was a partition between Mansing and Matuk, and in that partition, Gat No.110 (which is the suit property) had fallen to the share of Matuk. Relying upon the decision of the Apex Court in the case of *D.S. Lakshmaiah and another v. L. Balasubramanyam and another*, reported in (2003) 10 SCC 310 (Para 18), Shri Joshi has

urged that once the nucleus is proved with which the joint family property is acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be the self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. He submits that the Courts below have committed an error in ignoring this vital admission to hold that the suit property was the self-acquired property of Matuk, who bequeathed the same to the plaintiff by the registered will-deed dated 7-7-1992.

The so-called admission relied upon by Shri Joshi, the learned counsel for the appellants, pertains to partition. Except this, there is no evidence brought to my notice to establish nucleus for purchase of the suit property by Matuk, the original owner. The property stood in the name of Matuk only. On the basis of the evidence available on record, a possible view is taken by the Courts below that the property was the self-acquired property of Matuk. The proposition of law laid down by the Apex Court in the case of *D.S. Lakshmaiah*, cited *supra*, cannot be disputed. However, the ratio is not applicable to the facts of the present case, for the reason of want of pleading and evidence regarding nucleus.

No substantial question of law arises in this second

appeal. The second appeal is dismissed.

Judge.

Lanjewar