

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

Second Appeal No.118 of 2015
(Moreshwar s/o Vithoba Chalurkar v. Omdeo s/o Baliram Chalurkar)

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

Shri S.A. Deo, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 8th June, 2016

Regular Civil Suit No.108 of 1996 has been decreed by the Trial Court on 24-10-2007 granting declaration that the sale-deed dated 29-3-1996 purported to have been executed in favour of the defendant in respect of 0.39 R out of field Survey No.7/1 of Mouza Vendali, Tahsil and District Chandrapur is not genuine and it does not operate against the plaintiff. The Trial Court passed a decree perpetually restraining the defendant from taking forcible possession of the suit field from the plaintiff. The lower Appellate Court has concurred with the findings of the Trial Court, and Regular Civil Appeal No.226 of 2007 filed by the defendant has been dismissed on 9-10-2014. Hence, the original defendant is before this Court in this second appeal.

Both the Courts below have concurred in recording the finding that the sale-deed dated 29-3-1996 at Exhibit 51 was not executed by the plaintiff. It does not bear the signature/thumb

impression of the plaintiff. The evidence of the Hand-writing Expert has been relied upon. The Courts below have also taken into consideration the fact that passing of consideration for sale of property from the defendant to the plaintiff, has also not been established. The scribe of the document did not turn up for cross-examination and the original sale-deed is not placed on record.

Shri Deo, the learned counsel appearing for the appellant, submits that in the absence of there being prayer for cancellation of sale-deed, the Court could not have granted a declaration. There is no substance in this contention. The relief claimed by the plaintiff is very specific and the decree has been passed, holding that the sale-deed does not operate against the plaintiff, and that the defendant is perpetually restrained from disturbing the possession of the plaintiff.

Thus, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar