

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.107 of 2016
[Chandrakant Lalsingh Hajari (dead) through legal heirs Vs.
Kishorchand Tilokchand Hajari & others]

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

Court's or Judge's orders

Mr. C. N. Deshpande, Adv., for the appellant.
Mr. A.S. Mehadia, Adv., for respondent no.1.

CORAM : A. S. CHANDURKAR, J.

DATE : 21st June, 2017

The original defendant nos. 1 and 2 through their legal heirs have filed the present appeal challenging the decree for partition passed by the trial Court which has been maintained by the appellate Court.

The respondent no.1 is the original plaintiff who had filed suit for partition and separate possession of the property of his grand-father - Lalsingh. According to the plaintiff, Lalsingh had two sons - Chandrakant - the predecessor of the appellants and Tilokchand. According to the plaintiff, on 5th March, 1951, a partition was effected between Lalsingh and his two sons in which the suit property was allotted to the share of Lalsingh. After Lalsingh expired on 17th February, 1984, a right was created in the other co-parceners to seek partition. According to the plaintiff, on 1st February, 1983, the

defendant nos. 1 and 2 got executed a Will, purported to be signed by Lalsingh, and claimed right in the property.

The defendant nos. 1 and 2 took the stand that on 5th March, 1951 though a partition was effected, the suit property was allotted to the defendant no.1 and in that regard reliance was placed on a "Watani Yadi.". Further right was claimed on the basis of Will dated 1st February, 1983.

The trial Court after considering the evidence on record held that the plaintiff had proved that the suit property was allotted to Lalsingh in the partition dated 5th March, 1951. The "Watani Yadi" at Exh.112 was not believed as its contents were not proved. The Will dated 1st February, 1983 was also discarded. The suit accordingly was decreed and the appellate Court maintained said decree.

Shri C. N. Deshpande, learned counsel for the appellant, submitted that the plaintiff in his cross-examination had clearly admitted the execution of the "Watani Yadi" at Exh.112 and, therefore, the plaintiff could not be permitted to contend otherwise. As per said document, the suit property was allotted to the share of defendant no.1 and, therefore, it could not have been the subject-matter of partition in the suit. According to him, both the Courts erred in proceeding on the basis that contents of the Partition-Deed were not

proved, ignoring the admission of the plaintiff.

Shri Mehadia, learned counsel for the original plaintiff, supported the impugned judgment. He submitted that the Partition-Deed dated 5th March, 1951 was marked as an exhibit in view of provisions of Section 90 of the Evidence Act, as it was more than thirty years' old. An objection was raised to the exhibiting of said document on the ground that its contents were not proved. He submitted that the defendant no.1 had come up with an inconsistent case and, therefore, both the Courts rightly disbelieved his version.

Perused the impugned judgments. It can be seen that it is the case of the plaintiff that in the partition dated 5th March, 1951, the suit property was allotted to Lalsingh. On the other hand, according to the defendant no.1, by the document at Exh.112, this property was allotted to the defendant no.1. Admittedly, this document was marked as exhibit by relying upon provisions of Section 90 of the Evidence Act. The appellate Court in para 47 of its judgment has rightly observed that merely on the basis of such presumption, the contents of said document could not be treated as proved. There is no presumption in so far as the contents of such document are concerned. The further admission of defendant no.1 that in the partition dated 5th March, 1951, the property was divided into three

shares was also taken into consideration. In this backdrop, the admission of the plaintiff with regard to Exh. 112 cannot be treated as admitting the contents thereof. There is no evidence led by the plaintiff to prove the contents of the document at Exh.112 and the same has, therefore, been rightly discarded by both the Courts. The findings, thus, recorded are pure findings of fact.

In view of aforesaid, no substantial question of law arises for consideration. The appeal is, therefore, dismissed.

Judge