

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.529 of 2017
[Sudhakar Komaji Wadhai (dead) Smt. Nirmala Deochand Katore & others Vs. Smt. Pushpalata Deochand Vaidya]

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

Court's or Judge's orders

Mr. B. M. Kharkate, Adv., for the appellants.

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CORAM : A. S. CHANDURKAR, J.

DATE : 15th September, 2017

This appeal has been preferred by the original defendants who are aggrieved by the decree for specific performance passed by the trial Court.

It is the case of the plaintiff that the defendants agreed to sell 0.20 Are land that was allotted to the share of defendant no.3 for a consideration of Rs.1,85,000/-. An agreement was entered on 22nd February, 2008 by paying earnest amount of Rs. 25,000/-. After issuing notice, a suit for specific performance was filed.

In the Written Statement, it was pleaded that the suit property was an ancestral property and the sisters had not been joined as defendants to the suit.

The trial Court after considering the evidence on

record found that the suit property was allotted to the share of defendant no.3 in the partition. He was in possession since last twenty-five years and, therefore, the execution of the agreement was held to be valid. After finding the plaintiff to be ready and willing, the suit was decreed only against defendant no.3. It was held that other defendants or the sisters were not necessary parties. The appellate Court has confirmed this finding.

Shri B.M. Kharkate, learned counsel for the appellants, submitted that the suit property was ancestral property and in absence of all members of the family being joined as defendants, no decree could have been passed. Consent of family members was not obtained. He, therefore, submitted that a decree for specific performance could not have been passed.

Considering the evidence led by the parties, it can be seen that defendant no.2 admitted the case of the plaintiff that there was already a partition between the family members and 0.20 Are land was allotted to the share of defendant no.3. This stand was also taken by the defendant nos. 5 and 6. In fact, the trial Court passed a decree only against defendant no.3. Despite that, the other defendants also challenged the decree of the trial Court. As no relief has been granted against the other defendants, there was no reason for them to challenge such decree.

Considering the entire evidence on record and the finding recorded that the suit property was allotted to the share of defendant no.3, the decree has been rightly passed. Hence, no substantial question of law arises for consideration. Appeal is dismissed. No costs.

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Judge

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