

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

Second Appeal No.173 of 2015
(Sonabai Vishwanath Kunte v. Madhavanand Guru Wamananand Swami)

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

Shri V.N. Patre, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 11th January, 2017

The suit for possession on the basis of title was decreed by the Trial Court. The appeal preferred by the defendant has been dismissed. Hence, the defendant is before this Court in this second appeal against the concurrent findings of fact.

Both the Courts below are concurrent in holding that the ownership of the plaintiff-Trust over the suit property is not in dispute. The plaintiff has become owner of the suit property by virtue of gift from one Bapurao Narayan. Para 12 of the judgment of the Trial Court is reproduced below :

“12. Turning to the question of gift deed, it must be mentioned that admittedly the Chinmaya Murti Sansthan is the owner of suit property. Once the ownership of Chinmaya Murti Sansthan is admitted, the manner of acquisition of ownership is not of much importance. Be

that as it may. The testimony of P.W.1 Trambak speaks that as per revenue record the land admeasuring 8 acre out of survey no.290 was donated to Chinmaya Murti Sansthan by Bapurao Narayan. The certified copy of record of rights Exh.70-2 reveals that on 11.4.1957 the land admeasuring 8 acre 30 guntha was donated to Chinmaya Murti Sansthan through Vasudevanand by Bapurao Narayan. No any evidence is laid, on behalf of the defendant, to rebut the entries in the record of rights Exh.70-2. Therefore, it must be presumed that the suit property was gifted to plaintiff by Bapurao. Hence issue no.1 is answered in affirmative.”

The lower Appellate Court also records the findings in para 8 of its judgment on the question of ownership as under :

“8. ... It is not disputed that plaintiff Sansthan is the owner of the suit field. Only defence of defendant is that her husband and now herself are the tenant of the suit field. They are not claiming their ownership over the suit field. Moreover, the gift of suit field to plaintiff Sansthan by Narayan Bapurao is also not specifically denied but, on the contrary, in para 3 of the W.S. On page N9o.2, defendant admitted that the Sansthan became the owner of the suit field. The certified copy of record of right at

Exh.70-2 shows that the suit land bearing S.No.290/2 was gifted to plaintiff Sansthan. The certificate of Talathi at Exh.76 also proves the said fact. The 7/12 extract at Exh.69, 77 also proves that plaintiff Sansthan is the owner of suit field. The defendant has no document of ownership of the suit field. ...”

It was the defence raised by the defendant that one Vasudevanand was the owner of the suit property, and the plaintiff purchased 4.50 acres of land out of the suit property. It was also the defence raised by the defendant that Vasudevanand leased out 4 acres of land to the defendant, and as such the defendant was in lawful possession of the suit property. The Courts below have recorded the finding that there is no evidence produced on record to show that here was a transfer of property by Vasudevanand either by executing a sale-deed or by a lease-deed. Be that as it may, Vasudevanand not being the owner of the property, the Courts below have rejected the claim for possession of the suit property through Vasudevanand. The Courts below have also recorded the finding that there is not even a single document produced on record to show that in the year 1958-1959 or at any time thereafter, Vishwanath, the husband of the defendant, was cultivating the suit property.

Shri Patre, the learned counsel appearing for the

appellant-defendant, has relied upon the decision of the Apex Court in the case of *Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. and others*, reported in 2005(1) Mh.L.J. 1170, for the proposition that the plaintiff did not enter the witness-box, but one Trambak entered the witness-box as a power of attorney holder of Mahant Madavanand, the Trustee. The Courts below have relied upon the documentary evidence produced on record to hold that the Trust has become owner of the property by way of gift from Bapurao Narayan.

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

Judge.

Lanjewar