

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

SECOND APPEAL NO.318 OF 2017

Shivprasad s/o Shriram Jajodiya (dead) thr. LRs and ors

..VS..

Narayandas s/o Govindram Jojodiya

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

Court's or Judge's Order

Mrs. A.R. Khare, Counsel for the appellants.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 16, 2017.

1. Heard learned counsel Mrs. A.R. Khare for the appellants.
2. The present appeal is presented by the original defendants who have lost in both the Courts below.
3. According to learned counsel Mrs. A.R. Khare for the appellants/defendants, the plaint map was not proved since drawer of the map could not be examined in view of his death. The map is proved by his son by identifying his signature. She further submits that the Court Commissioner's Report cannot be accepted because the Court Commissioner was an Advocate. She further submits that the respondent/plaintiff has failed to prove title over the disputed land.
4. It is not in dispute that the disputed land in question was fallen to the share of the respondent/plaintiff and,

.....2/-

therefore, an issue was framed by the Trial Court as to whether the appellants/defendants prove that the disputed land was fallen to his share. Similarly, the point in that behalf was also formulated by learned Principal District Judge at Wardha that whether the appellants/defendants prove that the disputed area was allotted to his share. Both the Courts below recorded concurrent findings of facts that the appellants/defendants failed to discharge the burden on them and have failed to prove the said fact.

5. Insofar as the map is concerned, the drawer of the map could not be examined since he died. His son identified his signature and for that limited purpose only the map was admitted in the evidence. If the Trial Court had stopped, there was some point in favour of the appellants/defendants. However, thereafter, the Trial Court appointed an Advocate Shri Sadavarte as a Court Commissioner. Shri Sadavarte, thereafter, filed the Court Commissioner' Report pointing out encroachment. Advocate Shri Sadavarte entered into the witness box and he was thoroughly cross-examined by the appellants/defendants. However, nothing could be brought on record. Merely because the Court Commissioner was an Advocate, that cannot be the reason to keep aside his report, especially when the opportunity was granted to the appellants/defendants to cross-examine the said Court Commissioner. No substantial question of law is calling for

consideration. All issues are properly evaluated by the Courts below.

6. Consequently, the second appeal is dismissed..

JUDGE

!! BRW !!