

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

SECOND APPEAL NO.483 OF 2017

Shri Sudhakar s/o Bapuji Padmawar

..vs..

Shri Suresh s/o Sitaram Dhakate and anr

AND

SECOND APPEAL NO.490 OF 2017

Shri Sudhakar s/o Bapuji Padmawar

..vs..

Shri Suresh s/o Sitaram Dhakate

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

Court's or Judge's Order

Shri N.R. Bhisikar, Counsel for the appellant in both appeals.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 17, 2017.

1. These two second appeals are decided and disposed of by this common order since those arise out of common judgment passed by learned District Judge-3 at Chandrapur in Regular Civil Appeal No.154 of 2009 and in Regular Civil Appeal No.159 of 2009 dated 9.12.2016 respectively arising out of judgment and decree passed by learned 3rd Joint Civil Judge Junior Division at Chandrapur in Regular Civil Suit No.169 of 1997 dated 4.7.2009 by which the Trial Court dismissed the suit. However, decreed the counter claim in part.

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2. Heard learned counsel Shri N.R. Bhisikar for the appellant in both these appeals. With his assistance, I have perused the judgment and orders passed by both the Courts below.

3. The appellant is the original plaintiff. He filed a civil suit for declaration and permanent injunction. According to him, he has become owner by way of adverse possession in respect of the suit property i.e. house standing on plot No.209/2 at Mahakali Ward, Chandrapur. According to the appellant/plaintiff, original owner of this suit house was one Sambha Dhamnage. The defendants are the brothers. According to the appellants/plaintiffs, rent control proceedings were initiated before the Rent Controller bearing Case No.7/1971(1)85-86 and the Rent Controller rejected the application filed by original defendant No.1. It is further stated in the plaint that father of the defendants Sitaram claimed that he has purchased the suit property and there was litigation in between Sitaram and wife of Sambha Dhamnage in which the present appellant was made defendant. The said suit was registered as Regular Civil Suit No.84 of 1986 on 15.4.1995. The decree was granted in favour Sitaram. However, no attempt was made for obtaining the possession. It is also submitted that the taxes of Nagar Parishad are being paid by the plaintiff and the defendants are trying to handover the possession to Yuvak Ganesh Mandal and,

therefore, the suit was filed.

4. The suit was contested by the defendants and also filed a counter claim for possession.

5. The Trial Court dismissed the suit. The counter claim filed by the defendants was partly decreed and claimed of the defendants for handing over the possession was dismissed that resulted into filing of two different appeals before the Appellate Court. The appeal filed by the appellant was registered as Regular Civil Appeal No.154 of 2009. Whereas, the appeal filed by the defendants was registered as Regular Civil Appeal No.159 of 2009. By the common judgment, Regular Civil Appeal No.154 of 2009 filed by the appellant was dismissed and Regular Civil Appeal No.159 of 2009 filed by the defendants was allowed and the counter claim seeking possession of the suit property is decreed.

6. Though in the rent control proceedings permission to issue quit Notices was rejected by the Rent Controller vide order dated 14.3.2008, the Rent Controller recorded a specific finding that respondent Suresh is a owner. The said finding was not questioned by the present appellant.

7. The claim of the defendants for possession was based on forfeiture of the tenancy. In the earlier round of litigation, the Appellate Court specifically recorded a finding that the defendants are the owners of the suit house and the

appellant was occupying the suit house as a tenant of father of the defendants. The present plaintiff denied the title. The Lower Appellate Court has correctly appreciated the law in respect of forfeiture of the tenancy and in my view correctly recorded a finding that the defendants are entitled for possession.

8. No substantial question of law arises in the present second appeals. The second appeals are rejected.

JUDGE

!! BRW !!