

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

SECOND APPEAL NO.622 OF 2017

Gopinath Ganbaji Morande and ors

..vs..

Sukhdeo Ganbaji Morande and ors

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

Court's or Judge's Order

Shri V.N. Morande, Counsel for the appellants.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 23, 2017.

1. Heard learned counsel Shri V.N. Morande for the appellants.

2. The present appeal is filed by the original plaintiff whose suit, for declaration that the suit property is an ancestral property and sale-deed executed by defendant Nos.1 and 2 in favour of defendant No.3 be cancelled, is dismissed by learned Judge of the Trial Court. The Appellate Court also concurred with findings recorded by learned Judge of the Trial Court.

3. According to learned counsel Shri V.N. Morande for the appellants, both the Courts below erred in dismissing the suit. According to him,

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Exhibit 56 the extract of register maintained by the Grampanchayat is having no value and on the basis of the said, defendant No.1 cannot acquire title and, therefore, the appeal needs admission.

4. Admittedly, father of the appellants and respondent No.1 was a reputed person of the area in which the parties reside. He died in the year 2003. According to the appellants, in his memory the land in question was gifted to a library by executing a gift deed. However, since defendant No.1 failed to put his signature and agreed to gift away the said property to the library, the gift was incomplete.

5. Learned counsel for the appellants submits that taking advantage of Exhibit 56, defendant No.1 executed the sale-deed in favour of defendant Nos.3 and 4.

6. On being summoned, the defendants appeared and filed their written statement. According to the defendants, in the year 1999 during life time of Ganbaji partition took place and in the said partition disputed property was given to the share of defendant No.1 and consequently he has mutated his name in record of rights and thus he became absolute owner.

7. The Trial Court has framed following two issues:

(i) Whether the suit property is an ancestral property of plaintiffs and defendant No.1?

(ii) Whether the suit property was allotted to the share of defendant No.1 in oral partition in year 1998-99?

8. After appreciating the pleadings and evidence on record, learned Judge of the Trial Court recorded specific finding that the suit property is not an ancestral property and also recorded a specific finding that there took a partition in the year 1999. The property in question was allotted to the share of defendant No.1. The Appellate Court has also found the same.

9. Once both the Courts below recorded a specific finding that in the year 1999 partition took place and the property in question was given to the share of defendant No.1, it was but natural on his part to get his name mutated in record of rights. Therefore, in absence of anything on record it does not lie in the mouth of the appellants that the said entry Exhibit 56 is not having any value.

10. No substantial question of law arises out of

the impugned judgments and decrees passed by both the Courts below. All the findings are relating to the facts. No case is made out for interference. The second appeal is rejected.

JUDGE

!! BRW !!