

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

SECOND APPEAL NO.191 OF 2015

JANRAO S/O MACCHHA PACHARE

VS

PRALHADRAO S/O LAXMANRAO DESHMUKH AND ANOTHER

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

Court's or Judge's orders

Shri N. R. Tekade, Advocate for the appellant.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 10, 2017.

The appellant who is the original plaintiff is aggrieved by the dismissal of the suit filed by him for declaration that the sale deed dated 2-1-1993 executed in favour of defendant no.2 was null and void. According to the appellant, he belonged to 'Zinga Bhoi' tribe and under provisions of Section 36-A of the Maharashtra Land Revenue Code, 1966 (for short, the Code), the sale deed was illegal.

The trial Court after considering the evidence on record found that the plaintiff had not led any evidence to prove that the aforesaid sale deed was fraudulently executed. It further held that the caste 'Zinga Bhoi' was a Nomadic Tribe and hence, provisions of Section 36-A of the Code were not applicable. The appellate Court after re-appreciating the

evidence dismissed the appeal.

Shri N. R. Tekade, learned Counsel for the appellant submitted that without verifying appellant's caste certificate, the suit came to be dismissed. He relied upon the provisions of Section 36-A of the Code and urged that the appellant was entitled for benefit of said provisions. He also submitted that both the Courts wrongly held the execution of the sale deed to be duly proved.

The sale deed in question has been executed on 2-1-1993. The plea that the plaintiff had a loan transaction with the defendant no.1 has been held by both the Courts to have not been proved. This is after considering the entire evidence on record coupled with the fact that the plaintiff was silent from the year 1993 till filing of the suit in the year 2007. Said finding, therefore, does not call for any interference.

In so far as the reliance placed on Section 36-A of the Code is concerned, it can be seen that 'Zinga Bhoi' is a Nomadic Tribe and it does not fall in the list of Scheduled Tribes who are entitled for benefit of aforesaid provision. In other words, provisions of Article 342 of the Constitution of India are not attracted as the plaintiff belongs to Nomadic Tribe.

In that view of the matter, no substantial question

of law arises for consideration. The appeal is without any merit and hence, dismissed with no order as to costs.

JUDGE

/MULEY/