IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 227 of 2016
[Shashikar Bapuji Kumare & another Vs. Wasudeo Menga Kumare & others]

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

Mr. Rohit Joshi, Adv., for the appellants.
Mr. R.S. Vyas, Adv., for respondent nos. 1 to 3.
Ms. T. Khan, AGP for respondent nos. 4 and 5.

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CORAM : A. S. CHANDURKAR, J.

DATE : 13th June, 2017

Challenge in this Second Appeal is to the judgment of the appellate Court dated 4th January, 2016 in Regular Civil Appeal No. 58 of 2005, by which the judgment and decree passed by the trial Court in Regular Civil Suit No. 69 of 2001 stands confirmed.

The said suit was filed by respondent nos. 1 to 3 for a declaration that they continue to be owners of the suit property which is field no.44 and that their title was not affected by the Gift-Deed dated 10th November, 1997 executed by the appellants. The trial Court recorded a finding that the Gift-Deed was in contravention of the Maharashtra Land Revenue Code and it was not binding on the plaintiffs. It was held that no valid title would be transferred in favour of respondent nos. 3 and 4. The trial Court, therefore, parrtly decreed the suit and directed the Collector to decide the issue with regard to resumption of said land, or whether the appellants could retain the possession thereof. This decree has been affirmed by the appellate Court.

Shri Joshi, learned counsel for the appellants, submits that pursuant to the decree passed by the trial Court, proceedings have commenced before the Collector and by order dated 6th October, 2006, the Collector had directed the land to be resumed. This order has been subjected to a further challenge before the appellate authority. He submits that though the aforesaid proceedings could be decided, his apprehension is that the revenue authorities should not be influenced by any observations made in the impugned judgments.

Shri Vyas, learned counsel for respondent nos. 1 to 3 and Ms. Khan, learned Asstt. Govt. Pleader for respondent nos. 4 and 5, have opposed the appeal.

Both the Courts have held that the Gift-Deed dated 10th November, 1997 was not valid as it was executed in breach of the terms of the grant and without prior permission of the Collector. The Gift-Deed was, therefore, held not binding on the plaintiffs. This finding is in accordance with law and hence the present appeal does not give rise to any substantial question of law.

The proceedings are pending before the revenue authorities pursuant to the directions issued by the trial Court. Said proceedings shall be decided on their own merits and in accordance with the applicable law. The authorities shall take into consideration the fact that the initial grant of the land is dated 28th February, 1963 when the provisions of the Madhya Pradesh Land Revenue Code, 1954 were in operation.

Stand Appeal is accordingly disposed of. No costs.

Judge

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