

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

SECOND APPEAL NO.401/2017

Najukrao Purnaji Ingale (Dead) thr. LRs. Lata w/o Najukrao Ingale &
ors. ..vs. deorao Vithuji Wardhe & anr.

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

Court's or Judge's orders.

Mr. R. J. Shinde, Advocate for appellant.
Mr. B. Lonare, Advocate for respondent no.1.
Mr. M. L. Jadhao, Advocate for respondent no.2.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 10, 2017

Heard Mr. R. J. Shinde, Advocate for appellant,
Mr. B. Lonare, Advocate for respondent no.1 and Mr. M. L.
Jadhao, Advocate for respondent no.2.

The present second appeal is filed by the legal
representative of original defendant no.2-Najukrao Ingale.
The respondent no.1-Deorao is the plaintiff. The respondent
no.2-Babulal is the defendant no.1. They are real brothers.

Deorao filed suit for possession of 0.22 HR of
land from and out of survey no.36 situated at village
Khirgavan, Tq. Daryapur, Dist. Amravati. The total area of
survey no.36 is 1.22 HR. The said land was purchased by
Deorao and Babulal with their other brother Shriram on
09.04.1966 by registered sale deed. They were cultivating
the said land jointly. Later on, oral partition took place
amongst these three brothers and 0.44 R of land has fallen to

the share of each of the brothers. Northern portion came to the share of Babulal, Southern portion came to the share of Deorao while the middle portion came to the share of third brother Shriram.

The sale transaction took place in between Shriram and Deorao on 17.03.1983 by which Deorao acquired the share of Shriram and has thus become owner of 0.88 R of land.

Babulal-defendant no.1 sold 0.66 R land by sale deed to defendant no.2-Najukrao, the predecessor in title of the appellant. Though Babulal was owner of the land only to the extent of 0.44 R land, Najukrao has taken possession of the area of 0.66 R.

Deorao approached to Sub Divisional Officer, Daryapur who set aside the transaction since it was hit by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (For short the "Act"). The case filed by Deorao before the Sub Divisional Officer was rejected. However in the revision before the Additional Commissioner, the said transaction was set aside by order dated 06.05.1997 by holding that the said transaction was in violation of the Act. Najukrao, the predecessor in title of the appellant therefore preferred a writ petition before this Court. The said writ petition was registered as Writ Petition No.2243/1997. During the pendency of the said writ petition, the compromise took place and in that compromise, Najukrao and Babulal agreed to give possession to Deorao, the plaintiff in respect of 0.22R

land of the Central portion. In spite of the said compromise before this Court, the defendants failed to hand over the possession to the plaintiff. Therefore, the suit was filed.

It is the submission of Mr. Shinde, learned counsel for the appellant that, Babulal, from whom Najukrao purchased the property, failed to refund Rs.70,000/- as agreed by him on affidavit in writ petition and therefore the possession is not handed over to the plaintiff. I am afraid that such a submission has any legal foundation.

Once the authority under the Act found that the sale deed executed by Babulal in favour of Najukrao was hit by the provisions of the Act and when the said finding was challenged before this Court in Writ Petition No.2243/97 by Najukrao and in the said writ petition, compromise has arrived at in which Najukrao agreed to hand over the possession after accepting Rs.70,000/- from Babulal, merely because Babulal has failed to honour his own word, that cannot be the hindrance for obtaining possession of the suit property by the plaintiff.

It is an admitted position on record that the portion of 0.22 R was allotted in the oral partition to Shriram and Shriram executed the sale deed in favour of Deorao, the plaintiff. Thus, Babulal was not having any authority to execute the sale deed in respect of the said land in favour of Najukrao. Further, the said was also hit by provisions of the Act and it has attained finality.

Both the Courts below have correctly considered the facts of this case. There is no substantial question of law involved in the present second appeal. The findings of fact recorded by both the Courts below cannot be interfered with in the second appeal. The appeal is therefore dismissed. No order as to costs.

JUDGE

kahale