

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

Second Appeal No.378 of 2015
(Manohar s/o Anandrao Bonde v. Amar s/o Sharadrao Kale and others)

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

Shri D.L. Dharmadhikari, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 16th January, 2017

The Trial Court dismissed Regular Civil Suit No.58 of 1997 for grant of title on the basis of the registered sale-deeds dated 4-4-1998 and 9-5-1998 from the defendant No.2 and a permanent injunction claimed restraining the defendants from disturbing the possession of the plaintiff over the suit property was rejected. The lower Appellate Court has dismissed Regular Civil Appeal No.133 of 2008. Hence, this second appeal by the original plaintiff.

Undisputedly, the defendant No.2 was the owner of Survey Nos.113/3 and 113/4, the suit property. The plaintiff claims to have purchased the suit property by virtue of two sale-deeds dated 4-4-1998 and 9-5-1998 from the defendant No.2. The plaintiff himself came forward before the Court with the case that the registered sale-deed dated 1-3-1969 was executed by the defendant No.2 in favour of the defendant No.1 in respect of the

small portion of survey Nos.113/3 and 113/4 and the pleadings in para 3 of the plaint being relevant, are reproduced below :

“03. That the deceased defendant No.1 had purchased some unidentified small portion of field survey no.113/3 and 113/4 from the defendant No.2 vide Registered Sale deed dated 1/3/1969, prior to converting the said fields into non-agricultural land for residential purpose. It is submitted that the said sale-deed transaction dated 1/3/1969 of the deceased defendant No.1 is illegal and unoperative in the eyes of law as well as the deceased defendant No.1 himself has not acted upon it and neither did he accept it as legal one. It is further submitted that the deceased defendant No.1 had instituted one criminal case under Section 420 of I.P.C. against the deceased defendant No.2 on the basis of the said sale-deed dated 1/3/1969, wherein the Hon'ble Trial Court at Arvi came to the conclusion that the deceased defendant No.2 had committed an offence punishable under Section 420 of I.P.C. and accordingly convicted and sentenced. But the said judgment of the learned Trial Court have been set-aside and thereby deceased defendant No.2 has acquitted by the Hon'ble Session and District Court, Wardha vide their order dated 17/9/1984 passed in Criminal Appeal No.48/83 Sahebkhani Vs. State of Maharashtra + 1.”

The plaintiff has to establish his own case that the defendant No.1 purchased some unidentified small portion of the suit property by the registered sale-deed dated 1-3-1969. The plaintiff has to establish his case to claim a decree for permanent injunction restraining the defendants from disturbing his possession. If the plaintiff wanted to establish that the sale-deed dated 1-3-1969 was not in respect of the property, which the plaintiff purchased, and the question of identification is raised by the plaintiff, it was for the plaintiff to establish the same. The plaintiff has failed to establish the same. Both the Courts below are concurrent in holding that the plaintiff has failed to establish his possession over the suit property.

In view of the fact that the plaintiff has failed to establish the ownership and possession over the suit property, there could not be an order of injunction restraining the defendant No.2 from interfering with the possession of the plaintiff over the suit property. It was not the issue framed by the Trial Court or by the lower Appellate Court as to whether the sale-deed is hit by the provisions of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947.

Thus, the concurrent findings of fact do not give rise to any substantial question of law.

The second appeal is dismissed.

Judge.

Lanjewar