

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

Second Appeal No.420 of 2011
(Mohammad Ali Sayyed Ali Malik and others v. Gulam Tamiz Shaikh
Faizullah(Dead), through LRs. Eiyabee Shaikh Faizullah and others)

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

Shri L.A. Mohta, Advocate for Appellants.
Shri S.R. Deshpande, Advocate for Respondent No.4.

Coram : R.K. Deshpande, J.
Dated : 24th January, 2017

The Trial Court dismissed the suit for possession based on title. The lower Appellate Court has reversed the decision of the Trial Court. The dismissal of the suit has been set aside and the decree has been passed granting a declaration that the plaintiffs have become the owners of the suit property, and the defendants are directed to hand over the possession of it to the plaintiffs. A further decree for permanent injunction has been passed restraining the defendants from disturbing the possession of the plaintiffs over the suit property. Hence, the original defendants are before this Court in this second appeal.

The claim of the plaintiffs was based upon the registered

gift-deed dated 2-2-1971 at Exhibit 42, said to have been executed by one Haji Daud, the owner of the property, infavour of one Gulam Tamiz. The plaintiffs hold the property through the said Gulam Tamiz. It was the defence raised that the gift-deed at Exhibit 42 was revoked on 10-8-1973 at Exhibit 68, the deed of revocation. It was also the defence raised that the gift-deed was a nominal transaction by way of security for the loan obtained.

The lower Appellate Court records the finding that the gift-deed at Exhibit 42 has been proved, as the document was of more than 30 years' old and it was the registered gift-deed. It has held that the revocation-deed at Exhibit 68 does not include the property bearing survey No.32/2, admeasuring 1 H and 24 R. There is no evidence brought on record to show that it was a transaction by way of security for the loan obtained. The findings of fact recorded by the lower Appellate Court do not give rise to any substantial question of law muchless one which is framed at serial No.(a) in the memo of appeal, to the effect as to whether the lower Appellate Court was right in holding that the gift-deed is proved?

No substantial question of law arises for consideration.
The second appeal is dismissed.

Judge.

Lanjewar