

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

Second Appeal No.418 of 2011
(Mohammad Ali Sayyad Ali Malik and another v. Gulam Tamiz Shaikh
Faizullah (Dead), through Biyabee 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 passed a decree of permanent injunction restraining the defendants from interfering with the possession of the plaintiffs over the suit field survey No.31/1, admeasuring 3 H and 24 R, situated at Village Daf Ambapur, Tq. Dhamangaon Rly. This decree is confirmed by the lower Appellate Court in Regular Civil Appeal No.56 of 2004 on 29-3-2011. Hence, the original defendants are before this Court in this second appeal.

Shri Mohta, the learned counsel appearing for the appellants/defendants, has invited my attention to the substantial question of law at serial No.(a) in the memo of appeal, which is reproduced below :

“a) Whether, the learned Appellate court was legally correct to hold the Sale deed at Exh.34 dtd. 5.5.1971 is 30 years old document and therefore presumption regarding its execution is in favour of plaintiffs, and therefore erred in dismissing the appeal of the appellants?”

Both the Courts below have concurrently held that one Haji Daud was the owner of the property. He partitioned the said property in the year 1965, and the document is placed on record at Exhibit 63. This partition-deed was revoked in the year 1969, and the document is placed on record at Exhibit 66. Both these documents are registered. Consequently, Haji Daud remained to be the exclusive owner of the suit property. He executed the registered sale-deed dated 5-5-1971 at Exhibit 34 in favour of the plaintiffs. As a result of it, the plaintiffs became the absolute owners of the property in possession of them. The 7/12 extracts for the years 1975-76 to 1979-80 are produced on record at Exhibits 36 and 37; for the years 1983-84 and 1987-88 are produced on record at Exhibits 39 and 40; and for the years 1996-97 to 1998-99 are produced on record at Exhibit 41. The Courts below have concurrently held that the plaintiffs have established that they are in continuous possession of the suit property from the year 1971 as the owners thereof. There is no requirement of proof of attestation of the sale-deed. Hence, the

provision of Section 68 of the Evidence Act is not at all attracted.

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

Judge.

Lanjewar