

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 379 of 2017
[Arvind Madhavrao Gorantiwar Vs. Vasant madhavrao Gorantiwar & others]

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

Court's or Judge's orders

Mr. S. V. Sohoni, Adv., for the appellant.
Mr. R.L. Khapre, Adv., for respondent no.1.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 09th August, 2017

The original defendant in the suit for partition and separate possession filed by the respondents-plaintiffs has preferred this appeal.

The plaintiff nos. 1 and 2 and the legal heirs of their brother had filed suit for partition and separate possession against their other brother with regard to a house property situated on plot no. 280 at Mouza - Wani. According to the plaintiffs, their father - Madhavrao had purchased the suit house on 29th November, 1951. After his death on 18th January, 1975, the defendant continued residing therein, while the plaintiffs resided elsewhere. In August, 2008, their two sisters relinquished their respective shares from the suit

property and hence the plaintiffs sought partition of the house property claiming $3/4^{\text{th}}$ share.

In the Written Statement, it was admitted that the property belonged to the father and that both the sisters had relinquished their shares. According to the defendant, there were three family meetings held in which the plaintiffs had agreed to receive consideration for giving up their share, by virtue of which, the defendant alone would be the owner of the suit house.

The trial Court recorded a finding that the plaintiffs had $3/4^{\text{th}}$ share in the suit property and the defendant had failed to prove payment of consideration to them in lieu of their shares. This decree was confirmed by the appellate Court.

Shri S.V. Sohoni, learned counsel for the appellant, made two-fold submissions. According to him, both the sisters were necessary parties in the suit for partition and as they were not joined as defendants, the suit was liable to be dismissed. Secondly, in the three family meetings held between the family members, the value of the house was set at Rs.12,00,000/-, out of which Rs.9,00,000-00 was to be paid by him to the plaintiffs. Though part of the amount was paid and accepted by the plaintiffs, they had resiled from this arrangement. It was, therefore, submitted that the suit was not liable to be decreed.

Shri R. L. Khapre, learned counsel for the plaintiffs, supported the impugned judgment. According to him, the defendant in para 3 of the Written Statement admitted the aspect of relinquishment of shares by the two sisters. He then submitted that there was no evidence on record to indicate payments made to the plaintiffs in lieu of their shares in the house property. The admission of the plaintiffs in their cross-examination that amount of Rs.1,50,000-00 was received by them was with regard to the share in the sale of another property. It was, therefore, submitted that the Court had rightly decreed the suit.

I have heard the learned counsel for the parties and I have also perused the evidence on record.

In para 3 of the plaint, it was pleaded by the plaintiffs that both the sisters in August, 2008 had orally relinquished their shares in favour of the brothers. In the Written Statement, the contents of para 3 were not disputed. The trial Court and the appellate Court, therefore, accepted this stand of the plaintiffs and did not hold the suit to be bad on account of absence of necessary parties. In the light of the pleadings of the parties, this conclusion is correct.

As regards the agreement between the parties that the plaintiffs would accept Rs.9,00,000-00 as their share in the suit house, the same has not been duly

proved. Except the statement of the defendant, there is no other evidence in that regard. The admission of the plaintiffs in their cross-examination of not having received Rs.3,00,000-00, but having received Rs.1,50,000-00 has been stated to be towards the share of the field at village Chichghat. This stand appears to be probable considering the overall evidence on record.

I, therefore, find that both the Courts, on appreciation of the evidence on record, have granted decree of partition and separate possession. This adjudication does not give rise to any substantial question of law. Appeal is, therefore, dismissed. No costs.

Judge

||hedau|