

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

SECOND APPEAL NO.337 OF 2003

ANAND S/O KESHAV SONONE
VS
TATYA S/O KESHAV SONONE

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

Court's or Judge's orders

Shri R. D. Bhuibhar, Advocate for the appellant.
Shri A. R. Wagh, Advocate for LR's (1-a to 1-f) of respondent no.1.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 18, 2017.

This appeal arises out of suit for permanent injunction filed by the appellant – plaintiff with regard to field Survey no.31/5 situated at mouza Mokhad, Tah. Nandgaon (Khandeshwar), District Amravati. The suit has been dismissed by the trial Court and the appellate Court has affirmed said decree.

The following substantial question of law was framed while admitting the second appeal:

Though initially there was a partition between father and two sons on one hand and the third son i.e. the present appellant on the other, after the death of father Keshav can the present appellant Anand be deprived of his share in the property that had gone to the share of father along with other brothers ?

It is the case of the plaintiff that he and the respondent – defendant are real brothers. The plaintiff was in

possession of half portion of this field from the northern side. There was a well in the said field and it was agreed that both the brothers would use the same by operating the motor pump. As the defendant tried to obstruct the plaintiff, the suit came to be filed.

According to the defendant, it was denied that there was any partition between the brothers. The field was initially owned by father Keshavrao and after his death, the possession came with the mother Mudrikabai. After her death, the defendant continued in possession. It was then pleaded that the plaintiff was granted land admeasuring 4 acres 37 gunthas from the field Survey No.25 of the same village.

The trial Court on a consideration of evidence on record held that the plaintiff had failed to prove that he was the owner and possessor of the suit field. The stand of the defendant as pleaded was accepted and the suit came to be dismissed. The appellate Court has confirmed this finding.

Shri R. D. Bhuibhar, learned Counsel for the plaintiff submitted that merely because the plaintiff was granted 4 acres and 37 gunthas land from Survey No.25, it could not be said that he had no share in the land at Survey No.31/5. As the property was ancestral property, the plaintiff also had share in the same. Shri Bhuibhar, learned Counsel, however, fairly pointed out that the plaintiff had filed Regular Civil Suit No.1/1998 seeking partition of very same suit property. This suit, however, was dismissed on 30-6-2000 holding that there was already a partition

that had taken place earlier between the family members. The appeal filed in these proceedings being Regular Civil Appeal No.148/2000 was also dismissed.

Shri A. R. Wagh, learned Counsel for the defendant supported the impugned judgments. According to him, both the Courts rightly found that the plaintiff had no right in field Survey No.31/5. The plaintiff was already granted his share in Survey No.25 and hence, he was not in possession of field Survey No.31/5.

I have heard the learned Counsel for the parties at length. The present suit is for injunction simplicitor filed on the premise that the suit property was the joint property of both the brothers. However, as noted above, the plaintiff had filed Regular Civil Suit No.1 of 1998 for partition and separate possession of the very same suit property. Said suit having been dismissed and that adjudication having been maintain in appeal, it would not be now open for the plaintiff to seek perpetual injunction with regard to the very same suit property on the premise that it was a joint family property. Having failed to get the relief of partition in respect of that property, there would be no legal basis for seeking the relief of perpetual injunction in respect of that very property.

In view of aforesaid, the substantial question of law as framed is answered against the appellant. As a consequence, the adjudication by both the Courts stands confirmed.

Second appeal is thus dismissed with no order as to costs.

JUDGE

/MULEY/