

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 473 of 2017
[Mahadeo Pochu Chaudhari (dead) through legal heirs Vs. Amratbai Bhimji Upadhyay & 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. Sirpurkar, Adv., for the appellants.

CORAM : A. S. CHANDURKAR, J.
DATE : 21st August, 2017

This appeal is filed by the original defendant who is aggrieved by the decree for possession passed by the trial Court and confirmed by the appellate Court.

According to the respondents - plaintiffs, their predecessor - Bhimji purchased the suit property on 5th April, 1982 for a consideration of Rs.3,000-00. The defendant and his brother - Daulat were permitted to reside therein for some time as licensees. Thereafter, notice was issued by the original plaintiff terminating the license and claiming possession. On that basis, suit for possession was filed. In the Written Statement, it was denied that the plaintiff was the owner of the suit property. The title of the plaintiff came to be denied.

The trial Court considered the evidence led by the plaintiffs. The defendants did not enter into the

witness box nor did they examine any witness. After finding that the sale-deed was duly proved, the suit came to be decreed. The appellate Court confirmed the said decree.

Shri Sirpurkar, learned counsel for the appellants, submitted that the title of the plaintiffs was not duly proved. Though it was claimed that the suit property was jointly purchased, all co-owners were not impleaded as parties. Similarly, the brother - Daulat was also not joined as a party. It was submitted that the defendants were entitled to continue in possession as the title of the plaintiffs had not been proved.

I have heard the learned counsel for the appellants and perused the judgments of both the Courts.

The suit property was purchased on 5th April, 1982 by the predecessor of the plaintiffs - Bhimji. This sale-deed has been duly proved by examining the attesting witness. On that basis, the plaintiffs' title was established. The defendants denied the ownership as well as relationship with the plaintiffs. As the title was duly proved, the decree came to be passed in favour of the plaintiffs. The defendants having failed to substantiate their defence, I do not find that both the Courts committed any error in holding in favour of the plaintiffs.

Hence, no substantial question of law arises for consideration. Second Appeal is, therefore, dismissed. However, the appellants are granted time to vacate the suit premises by the end of October, 2017.

Judge

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