

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

SECOND APPEAL NO.435 OF 2017

Wamanrao s/o Natthusa Lohote

-vs-

Jyoti Wamanrao Lahote

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

Court's or Judge's Orders.

Shri R. J. Shinde, Advocate for appellant.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 16, 2017

The appellant is the original defendant against whom the respondent had filed suit for permanent injunction seeking to restrain him from disturbing her possession.

It is the case of the respondent that on 12/04/2001 the appellant executed a Gift Deed in her favour. The respondent thereafter on 28/04/2001 married the appellant. As the appellant was threatening her possession, the aforesaid suit came to be filed.

In the written statement a stand was taken by the appellant that this Gift Deed was got executed by the respondent and her father through fraud and misrepresentation.

After the parties led evidence, the trial Court held that the execution of the Gift Deed was duly proved. There were no specific pleadings raised with regard to exercise of undue influence or practicing of fraud by the respondent for having the said Gift Deed executed. The suit accordingly was decreed. The appellate Court has confirmed this decree.

Shri R. J. Shinde, learned counsel for the appellant submitted that both the Courts committed an error in holding in favour of the respondent. The Gift Deed was got executed by the respondent along with her father on 12/04/2001. The appellant was suffering from illness and taking advantage of the same, this Gift Deed was got executed. He further submitted that the appellate Court did not frame proper points for determination while deciding the appeal.

Having perused the impugned judgment, I find that the respondent after leading cogent evidence and examining the attesting witness has proved the execution of the Gift Deed. The record further indicates that subsequent their marriage, the respondent had initiated proceedings for grant of maintenance and in

these proceedings the marriage of the parties had been held to be valid. In absence of any pleading with regard to fraud and undue influence, it has been found that the defence as raised was not liable to be accepted.

In so far as framing of proper points is concerned, that by itself would not vitiate the judgment of the first appellate Court if it is found that all the aspects involved including the evidence on record has been considered while deciding the appeal. Same has been done in the present case. Hence no substantial question of law arises for consideration. The appeal is accordingly dismissed. No costs.

JUDGE