

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

SECOND APPEAL NO.523 OF 2017

Yashodabai w/o Harichandra Waghmare

-vs-

Shamchand s/o Jadhoraaji Badwaik and ors.

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

Court's or Judge's Orders.

Shri R. A. Gupte, Advocate for appellant.

CORAM : A.S.CHANDURKAR, J.

DATE : September 13, 2017

The original defendant No.1 has filed the present appeal being aggrieved by the decree for partition and separate possession passed by the trial Court and confirmed by the appellate Court.

2. According to the plaintiff, the appellant herein was her real sister. Their father was the owner of ancestral property and after his death, both the sisters were entitled to a share therein. According to the plaintiff, the defendant No.1 on the basis of Gift Deed dated 03/01/1985 entered her name in the records. Hence suit for partition and separate possession was filed. The defendant No.1 relied upon the Gift Deed dated 03/01/1985 and claimed that the same was validly executed.

3. The trial Court found that the original Gift Deed was not produced on record. Similarly the attesting witness was also not examined in support of said document. The trial Court therefore passed decree for partition and separate possession. Said decree is confirmed by the appellate Court.

4. Shri R. A. Gupte, learned counsel for the appellant submitted that the trial Court wrongly shifted the burden on the defendant No.1 for proving the Gift Deed. According to him as it was the case of the plaintiff that this Gift Deed was null and void, such burden could not have been shifted on the defendant No.1. He therefore submitted that both the Courts committed an error by decreeing the suit.

5. On perusing pleadings of the parties it could be seen that the plaintiff had pleaded that the Gift Deed dated 03/01/1985 was not binding on her. The defendant No.1 in her written statement pleaded that the same was a valid Gift Deed executed by her father. The initial burden as to validity of the Gift Deed was therefore on defendant No.1. If the Gift Deed was proved to be valid, said burden would have then shifted on the plaintiff to prove that the same was null and void. Hence the issue as framed appears to be legally correct.

6. The appellant failed to place on record the original Gift Deed and also did not examine any attesting witness. On that basis it was found that said Gift Deed has not been duly proved. I find that this adjudication by both the Courts is legally correct. The appeal does not give rise to any substantial question. Same is therefore dismissed. No costs.

JUDGE