

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

Second Appeal No.416 of 2015
(Vithal s/o Mahadeorao Bhokte v. Vinod s/o Gunawantrao Bhokte and
others)

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

Shri A.M. Ghare, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 25th January, 2017

Shri Ghare, the learned counsel appearing for the appellant, has invited my attention to the averments made in the plaint. In para 2 of the plaint, there is a mention of the suit property, which is survey No.100, admeasures 6.62 HR. In para 3, it is stated that the plaintiff and the defendant No.1 jointly own another field survey No.110, admeasuring 1.65 HR at Mouza Anji, Tq. Deoli, Dist, Wardha, and this field is adjacent to the field described in para 2 of the plaint. In para 4, it is stated that the father of the plaintiff and the father of the defendant No.1 were real brothers. In a partition, the plaintiff and the defendant No.1 got the abovesaid field jointly. However, the field survey No.100 is exclusively owned by the plaintiff after the death of the father in the year 1996. Shri Ghare has also invited my attention to the Will dated 12-5-1996, said to have been executed by the father of the plaintiff in favour of the plaintiff in

respect of 4.40 HR land out of survey No.100. It is urged on the basis of the contents of the Will that the father of the plaintiff was the exclusive owner of the entire survey No.100, admeasuring 6.62 HR.

The admission of the plaintiff in his cross-examination in Regular Civil Suit No.91 of 2004 to the effect that there was an agreement that 4.40 HR of land shall be retained by the father of the plaintiff, and 2.22 HR of land shall be retained by the father of the defendant, upon which the reliance is placed by the lower Appellate Court to hold that there was a partition between the grandfather of the plaintiff and the defendant, cannot be faulted with. In the cross-examination, the plaintiff clearly agreed that in the oral partition, the area of 2.22 HR from the southern side of survey No.100 was allotted to the defendant. The Will dated 12-5-1996 executed by the father of the plaintiff is conspicuously silent about the balance 2.22 HR of land out of survey No.100. Obviously, the Will would operate after the death of the father of the plaintiff, and if the father of the plaintiff was the exclusive owner of the entire survey No.100, then there was no reason for the exclusion of 2.22 HR of land out of survey No.100 from the Will dated 12-5-1996. In the absence of proof of better title of the plaintiff over the area of 2.22 HR of land out of survey No.100, no substantial question of law arises for consideration.

The second appeal is dismissed.

Judge.

Lanjewar