

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

SECOND APPEAL NO.479/2017

Sunil Dinkarrao Gudadhe

v.

Anil Dinkarrao Gudadhe and others

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

Court's or Judge's orders.

Shri.A.S.Kilor , the learned counsel for the appellant

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 7, 2017

1] Heard Shri A.S.Kilor the learned counsel for the appellant in extenso. He represents original plaintiff. The suit for declaration is concurrently dismissed by both the Courts below.

2] According to the learned counsel for the appellant, subsequent to the partition in between Dinkarrao the father of the appellant and respondent Nos. 1 to 3, in between Dinkarrao and respondent No. 1 there was a memorandum of understanding by which it was agreed not to give effect or cancel the registered partition deed. According to the learned counsel for the appellant, this agreement is not properly considered by the learned Courts below and therefore warranted interference by this Court.

3] It is not in dispute that Dinkarrao, the father of the appellant and the respondent on one hand and respondent No. 1 Anil executed a registered partition deed on 22/5/1973 which was duly registered with the Registering Authority. Not only that, the said registered partition deed was executed by the Dinkar for on behalf of appellant and respondent No. 2 Deepak and 3 Sau. Shobha Diliprao Kale, he being Karta of the joint family.

4] According to the case of the plaintiff, in the year on 6/12/2007 after the death of Dinkar, a document came into existence under the name and style "Memorandum of Understanding" by which parties to the said memorandum of understanding i.e. the present appellant and respondents agreed that the registered partition deed shall be treated as cancelled and the share will have to be demarcated as per the said memorandum of understanding.

5] In my view, both the Courts below have rightly discarded the memorandum of understanding since it is an unregistered document and by such document Registered partition deed which was executed by Karta of Hindu family can not be cancelled. Further it is not the case of the appellant that, in that partition no share was allotted to Sunil, Dipak and Shobha. Definite shares were allotted to them.

6] In view of the aforesaid discussion, I am of the view that there no substantial question of law in present second appeal. Rejected.

JUDGE

RSG