

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

Second Appeal No.112 of 2015
(Smt. Krishnabai Nagoraoji Gorle and others v. Shri Mahadeo s/o Baliramji
Chude)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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Shri S.P. Kshirsagar, Advocate for Appellants.
Shri K.N. Dadhe, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 4th January, 2017

The Trial Court passed a decree for partition of the suit property, and the plaintiff is held entitled to one-half share in the suit property. The lower Appellate Court has concurred with the findings recorded by the Trial Court and the decree passed is maintained.

Shri Kshirsagar, the learned counsel appearing for the appellants, does not dispute the joint ownership of the plaintiff and the defendants in respect of the suit property, which is also the finding of fact recorded by the Courts below. However, he has urged that the defendants have carried out the construction with the knowledge of the plaintiff, and on the basis of Section 51 of the Transfer of Property Act, 1882, it is urged that the improvements made by the defendants over the suit property

entitles them to retain the share, which is the constructed property.

Both the Courts below have not dealt with this aspect of the matter. Shri Kshirsagar could not point out any pleading and proof in respect of the extent of construction carried out before filing of the suit. The question of extent of construction carried out is essentially a question of fact, and if the defendants were interested to get the benefit of it, the burden was upon them to plead and prove in terms of Section 51 of the Transfer of Property Act. There is no such pleading and proof. No substantial question of law arises in this second appeal.

The second appeal is dismissed.

Judge.