

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

SECOND APPEAL NO.434 OF 2016

Aminabai wd/o Mohd. Khan (Dead), Alikhan s/o Mohd. Khan and ors.

-vs-

Kazim Khan s/o Ismail Khan 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 S. A. Mohta, Advocate for appellants.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 28, 2017

The appellants are the legal heirs of original plaintiff. The original plaintiff had filed suit for perpetual injunction seeking to restrain the original defendants from interfering with their possession. Subsequently by amending the suit, a further prayer for possession of area admeasuring 10' x 10' came to be made. According to the plaintiff, in the partition between the family members the suit property had fallen to the share of the plaintiff. According to defendants the plaintiff was seeking possession of larger area than what was allotted to him in the partition.

The trial Court after considering the partition deed

at Exhibit-62 found that the plaintiff was granted 220 sq.ft land and it accordingly decreed the suit for perpetual injunction to that extent. The prayer for possession of further area was not granted as no right to that area was demonstrated. The appellate Court has confirmed this decree.

Shri S. A. Mohta, learned counsel for the appellants submitted that the appellants were entitled for possession of 10' x 10' area which was refused by the trial Court as well as the appellate Court. According to him the defendants were not entitled to that part of area and hence decree of perpetual injunction ought to have been passed.

Perused the impugned judgment. Both the Courts have granted the relief of perpetual injunction to the original plaintiff after considering the document at Exhibit-62. The contents of this document which is a registered partition deed was admitted by all the parties. The same indicated that the plaintiff's father had got only 220 sq. ft. land in that partition. There was no

basis for claiming possession of further land by the plaintiff.

In view of aforesaid, the adjudication by both the Courts is on the basis of partition deed at Exhibit-62. Same does not call for any interference. The Second appeal does not give rise to any substantial question of law and is therefore dismissed with no order as to costs.

JUDGE