

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

SECOND APPEAL NO.665 OF 2017

Arun Annaji Choudhari and anr

..vs..

Rambhau Motiramji Nimbhorkar

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

Court's or Judge's Order

Mrs. S.W. Deshpande, Counsel for the appellants.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 6, 2017.

1. Heard learned counsel Mrs. S.W. Deshpande for the appellants.
2. By the present appeal, the defendants are challenging judgment and decree passed by learned Civil Judge Junior Division at Warud in Regular Civil Suit No.9 of 2006 dated 18.9.2010 together with judgment and decree passed by learned Principal District Judge at Amravati in Regular Civil Appeal No.191 of 2010 dated 19.1.2015.
3. Admittedly, suit fields are originally owned by the father of the present appellants. On 2.2.1996, appellant No.1 executed a sale-deed in favour of the respondent/plaintiff in respect of 43R. On 15.4.1996, appellant No.2 Vasant executed a sale-deed in respect of 87R in favour of respondent/plaintiff. After becoming owner of the suit lands to the extent of 43R and

.....2/-

87R by these two registered sale-deeds, the respondent/plaintiff got his name mutated in the revenue record and was in cultivating possession thereof. At no point of time, the appellants/defendants filed a suit for cancellation of the sale-deeds nor the order of revenue authority for mutating name of the respondent/plaintiff was questioned.

4. Since the appellants/defendants were trying to disturb the possession, the respondent/plaintiff filed a suit for declaration and injunction. The suit was contested by the appellants/defendants mainly on the ground that the sale-deeds were nominal documents as the respondent/plaintiff is a moneylender. Also, the appellants/defendants filed a counter claim for perpetual injunction restraining the respondent/plaintiff from disturbing their possession by paying requisite Court Fees of Rs.200/-.

5. The Issues were struck by learned Judge of the Trial Court on the rival pleadings. There was an Issue as to whether the plaintiff is engaged in any illegal money lending transaction? Learned Judge of the Trial Court recorded a finding that the plaintiff is not a moneylender. Not only that, the case of the defendants was also rejected by learned Judge of the Trial Court that the plaintiff was to execute the deed of conveyance. Learned Judge of the Trial Court also recorded a finding that the plaintiff is in possession and, therefore, is

entitled for injunction. Learned Judge of the Trial Court also dismissed the counter claim.

6. Learned Judge of the Lower Appellate Court specifically recorded a finding that from the date of execution of the sale-deeds till filing of the suit, at no point of time any claim was put forth by the appellants/defendants for cancellation of the sale-deeds. Learned Judge of the Lower Appellate Court has also recorded a finding, on appreciation of the evidence, that the defendants have failed to point out any other incident by which it could be said that the plaintiff is a moneylender.

7. Insofar as nature of the property is concerned, even if it is assumed that it is an ancestral property, appellants/defendants being Karta have every right to sell the property. Such a sale would not become illegal. However, other members have a right to challenge the same on the ground of want of legal necessity and if such a suit is filed, it is for the purchaser to prove that the sale-deed was executed for legal necessity. No such a suit was filed by any of the members of the joint family within a period of limitation.

8. Both the Courts below since have recorded a concurrent findings of facts that the respondent/plaintiff has become owner by virtue of two sale-deeds and is in possession of the said agricultural land and since there was nothing on record even to suggest that it was a money lending transaction, no

substantial question of law emerges in the present second appeal. The second appeal is dismissed.

9. In view of dismissal of the second appeal, civil application, if any, also stands disposed of.

JUDGE

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