

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

SECOND APPEAL NO.63 OF 2016

Hemraj s/o Dharmaji Kolhekar and ors.

-vs-

Shantabai wd/o Gangadhar Kolhekar 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 M. P. Kariya, Advocate for appellants.
Shri P. P. Pendke, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : September 13, 2017

This appeal has been filed by the original defendants against whom a decree for possession has been passed.

2. It is the case of the respondents-plaintiffs that the suit property is a house was purchased by their grandfather Bapurao in the name of his minor son, Waman. This purchase was dated 04/04/1941. After the death of Waman, the suit property was again mutated in the name of Bapurao. Bapurao had one brother Dharmaji. According to the plaintiffs said Dharmaji was permitted to reside in the premises out of love and affection. After the death of said Dharmaji the defendants were asked to vacate the premises but the same was not done. Hence after issuing notice, the suit was filed.

3. According to the defendants, the suit property was in fact

purchased out of the contribution made by Dharmaji who was a freedom fighter. It was their case that as properties of freedom fighters were being seized, the sale deed was got executed in the name of Waman though the sale proceeds were contributed by Dharmaji. Another plea raised was that due to long standing possession, the defendants had acquired the title.

4. After the parties led evidence, the trial Court held that the sale deed at Exhibit-141 was got executed by father Bapurao in the name of Waman. It was found that the defendants did not lead any evidence to indicate contribution of any amount by Dharmaji towards purchase of the suit property. On that basis the suit was decreed.

5. Shri M. P. Karia, learned counsel for the appellant re-iterated the grounds that were raised before the appellate Court. It was submitted that as Dharmaji was a freedom fighter, the sale deed was got executed in the name of his brother. Even if the sale deed stood in the name of Waman, the defendants were in possession since inception. He further submitted that on account of long standing possession, the defendants had perfected their title through adverse possession.

6. Shri P. P. Pendke, learned counsel for the respondents supported the impugned judgment. It was submitted that the defendants had failed to prove their defence and hence on the basis of

title, the plaintiffs were entitled to succeed. He submitted that considering the relationship between the parties, Dharmaji was permitted to reside in the premises.

7. I have heard learned counsel for the parties at length and perused the impugned judgment. It has been found on the basis of the evidence on record that the sale deed at Exhibit-141 stood in the name of Waman through his father. The defendants have been unable to bring on record such evidence on the basis of which it could be held that Dharmaji had contributed for the purchase of the suit house. On the basis of relationship between the parties, it can be easily inferred that Dharmaji was permitted to reside in the premises owned by his brother. After issuing a notice, and terminating the licence, the suit came to be filed.

8. I find that both the Courts rightly found in favour of the plaintiffs. The findings recorded are pure findings of fact. Hence the appeal does not give any rise to any substantial question. Same is dismissed with no order as to costs.

JUDGE