

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

Second Appeal No.233 of 2015

[Laxman s/o Krishnaji Sakharkar (Dead), through LR. Arvind s/o Laxman
Sakharkar and others v. Dinkar s/o Govindrao Sakharkar and others]

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

Smt. R.S. Sirpurkar, Advocate for Appellants.
Shri S.D. Chopde, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 9th January, 2017

The Trial Court dismissed a simpliciter suit for passing a decree for permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the suit property. The lower Appellate Court has dismissed Regular Civil Appeal No.152 of 2008. Hence, the legal representatives of the original plaintiff are before this Court in this second appeal.

The claim of the plaintiff for possession of the suit property was based upon the partition-deed dated 14-6-1977 at Exhibit 85, the tax receipts for certain period, and the notice, said to have been issued by the defendants, containing a recital that the plaintiff was given permissive possession. On the question of the partition-deed at Exhibit 85, the lower Appellate Court holds that the deed was compulsorily required to be registered, and

hence it not being registered, the same is not admissible in evidence. The tax receipts do not furnish the evidence of possession. There is a serious dispute regarding title of the suit property, which can be adjudicated in a duly constituted suit. The Courts below have held that the plaintiff has failed to established his possession over the suit property, and hence the decree for permanent injunction has been refused.

No substantial question of law arises for consideration. The second appeal is dismissed. The parties are at liberty to work out their rights by filing the appropriate proceedings. None of the findings recorded on the question of title shall come in the way of the parties.

Judge.

Lanjewar