

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

SECOND APPEAL NO.103 OF 2017

Bhimrao s/o Rajaramji Mhasaye

..vs..

Sau. Ushatai Atmaramji Bhopale, thr. LR. and ors

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

Court's or Judge's Order

Shri C.A. Joshi, Counsel for the appellant.

Shri Vipul Bhise, Counsel for the respondents.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 1, 2017.

1. Heard learned counsel Shri C.A. Joshi for the appellant and learned counsel Shri Vipul Bhise for the respondents, *in extenso* also perused the record which was called by order of this Court dated 23.8.2017.

2. After hearing both learned counsel for the parties and after having gone through the relevant documents and record, this appeal is required to be **ADMITTED** on following substantial question of law:

Whether in absence of mutation entries indicating the name of plaintiff No.1 as the owner of the suit property pursuant to sale deed dated 2.7.1992 is a relevant factor while considering the defence raised

by the defendant that the sale deed was nominal in nature and not to be acted upon?

3. Learned counsel Shri Vipul Bhise waives notice on behalf of the respondents.

Civil Application (CAS) No.1029 of 2017

1. This is an application for grant of Stay to the execution of the judgment and decrees passed by the Courts below.

2. Heard learned counsel Shri C.A. Joshi for the applicant/appellant/defendant and learned counsel Shri Vipul Bhise for the non-applicants/respondents/plaintiffs.

3. Today, the Court has admitted the second appeal since it involves substantial question of law.

4. According to learned counsel for the applicant/appellant/defendant, the applicant/appellant/ defendant is in possession of the suit property.

5. The record shows that the non-applicants/respondents/plaintiffs filed an application for injunction with a prayer that plaintiffs' possession over the suit property should not be disturbed by the applicant/appellant/defendant.

6. The Trial Court on 19.9.1996 directed the parties to

the application to maintain *status quo* . The said order was challenged by the the plaintiffs by filing Misc. Civil Appeal No.110 of 1996 and the learned District Judge on 20.6.1997 dismissed the appeal filed by the plaintiffs and directed that the parties should maintain the *status quo* in respect of the possession of the suit property.

7. According to the appellant, he is in actual physical possession of the suit property. The present appeal is admitted on the substantial question of law since the names of the plaintiffs are not mutated in the relevant revenue record.

8. In that view of the matter, the applicant/appellant has made out a *prima facie* case for Stay. Hence, the application is allowed.

9. Judgment and decree passed by learned Civil Judge Junior Division at Telhara in Regular Civil Suit No.141 of 1995 dated 9.11.2001 which is confirmed by learned District Judge-1 at Akot in Regular Civil Appeal No.84 of 2005 (Old Reg. Civil Appeal No.293 of 2001) dated 29.4.2016 shall remain stayed during the pendency of the present appeal.

10. The civil application is disposed of accordingly.

JUDGE

!! BRW !!

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