

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

SECOND APPEAL NO.452 OF 2016

TEJRAO PARBAT UBARHANDE THROUGH LRS AND OTHERS
 VS
 LAXMAN PARBAT UBARHANDE

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

Court's or Judge's orders

 Shri Ashok Raghute, Advocate for the appellants.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 21, 2017.

The appellants are the legal heirs of the original defendant against whom the respondent had filed suit for possession of 0.09R land. It is the case of the plaintiff that in the partition that took place in the year 1987, this land was allotted to his share as it was falling in Gut No.259. The defendant had entered into possession in an illegal manner and hence, after issuing notice suit came to be filed for removal of encroachment. In the written statement, the defendant took the stand that amount of Rs.10,000/- was given to the original plaintiff and that in lieu of that the defendant was put in possession of the aforesaid land. It was pleaded that the same was an oral transaction and hence, the claim as made was not justified.

The trial Court after considering the evidence on

record found that as per the partition deed dated 17-1-1987, the plaintiff was the owner of the suit land. The transaction pertaining to the year 1993 and amount of Rs.10,000/- being paid by the defendant was not proved. The trial Court, therefore, decreed the suit. The appellate Court confirmed the aforesaid judgment.

Shri Ashok Raghute, learned Counsel for the legalheirs of the original defendant submitted that considering the relationship between the parties there was no written document or sale deed executed in favour of the defendant. The defendant was in possession since the year 1993 and the plaintiff without stating the true facts had not approached the Court with clean hands. It was, therefore, submitted that the suit could not have been decreed.

Perused the impugned judgments. It is not in dispute that in the partition that took place on 17-1-1987 the suit land fell to the share of the plaintiff. The burden to prove that the defendant had paid sum of Rs.10,000/- to the plaintiff and the land was to be sold to the defendant was on the defendant. The evidence sought to be led by the appellant no.1 in that regard has not been found to be sufficient. Considering the fact that the plaintiff was allotted the suit land in the partition of 1987, the defendant had no title over the same.

In that view of the matter, the decree as passed cannot be said to be contrary to law. No substantial question of law arises for consideration. The second appeal is, therefore, dismissed.

JUDGE

/MULEY/