

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.8 of 2016
[Sanjay Haribhau Pandav Vs. Sau. Leelabai Bhikaji Pandav]

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

Court's or Judge's orders

Ms. Najbale, Adv., for the appellant.
Mr. U. J. Deshpande, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 21st August, 2017

This appeal is filed by the original defendant who is aggrieved by the decree for possession passed by the trial Court and confirmed by the first appellate Court.

It is the case of the respondent-plaintiff that on 8th January 1992, she had purchased 14 Gunthas land from Gat No. 202 for consideration of Rs.50,000/-. Portion thereof was given to the defendant who was her nephew for running his business. On that basis, the defendant started conducting his business. As the plaintiff desired possession of that property, she issued a notice to the defendant and then filed suit for its possession.

In the Written Statement, the case as pleaded

was denied. According to the defendant, he was running the shop since last more than fifteen years and he had become owner by virtue of adverse possession. Thereafter, the plaintiff's ownership over the property itself was disputed.

The trial Court on considering the evidence on record held the plaintiff's title to be duly proved. It accordingly decreed the suit. The appellate Court has confirmed that decree.

Ms. Najbile, learned counsel for the appellant, submitted that the appellate Court failed to take into consideration the documents at Exhs.63 and 64 which were notices issued by the Govt. authorities for removal of encroachment. From these notices, it was clear that the defendant was running his business on a Govt. plot. It was then submitted that the plaintiff examined her son as her witness, but he did not have any Power of Attorney in his favour, on the basis of which he could have deposed. It was submitted that in absence of such Power of Attorney, the plaintiff's son could not have deposed in her place. Relying upon the judgment of the Honourable Supreme Court in **Vinod Kumar Vs. Gangadhar** [(2015) 1 SCC 391], it was submitted that the appellate Court failed to consider the entire material on record before dismissing the appeal.

Shri U.J. Deshpande, learned counsel for the

respondent, supported the impugned judgments. He referred to the deposition of the parties to indicate that the concerned witness who had brought on record the notices at Exhs.63 and 64 was not aware about the extent of encroachment. It was submitted that the plaintiff's son having deposed on her behalf, there was no question of possessing a Power of Attorney for that purpose.

Having heard the respective counsel and having perused the evidence on record, I find that both the Courts have rightly held in favour of the plaintiff. The witness examined on her behalf being her own son who was aware about the facts of the case had specifically deposed that he was so instructed by his mother. On account of her illness, she could not come to Court for deposing. Considering the relationship between the plaintiff and her witness, I do not find that it was necessary for him to have been specifically authorized by issuance of a Power of Attorney.

The plaintiff's sale-deed has been proved at Exh.43. DW 5 examined on behalf of the defendant had placed on record notices at Exhs. 63 and 64 for removal of encroachment on the State Highway. In his cross-examination, he admitted that details of encroachment were not mentioned therein and he was not aware of encroachment made by the defendant. These notices pertain to the year 2005-06 and the defendant still

continues in possession. Considering the relationship between the parties, it is obvious that the plaintiff had permitted her nephew to conduct his business on a portion of the property purchased by her.

Though the first appellate Court has not specifically referred to the notices at Exhs. 63 and 64, I find that absence of that consideration would not vitiate the impugned judgment. The other documents indicate the plaintiff's title and her entitlement to relief. Hence, the ratio of the judgment relied upon by the learned counsel for the appellant does not support her case. Hence, the appeal does not give rise to any substantial question of law. Same is, therefore, dismissed. No costs.

Judge

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