

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

SECOND APPEAL NO.12 OF 2014

MOTI S/O RAGHUVIR SUNDE
VS
VIJAY S/O HARICHANDRA KHANDELWAL AND ORS

AND

SECOND APPEAL NO.14 OF 2014

MOTI S/O RAGHUVIR SUNDE
VS
VIJAY S/O HARICHANDRA KHANDELWAR & ORS

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

Court's or Judge's orders

Shri Anand Parchure, Advocate for the appellant.
Shri M. G. Bhangde, Senior Advocate with Shri S. N. Tapadia, Advocate
for the respondent no.1.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 12, 2017.

In both these appeals a common judgment passed
by the appellate Court dated 11-9-2013 is under challenge.

The appellant is the original plaintiff in Regular
Civil Suit No.33 of 1998 that was filed for a declaration that
four sale deeds at Exhibits 127 to 130 executed in favour of
defendant no.1 therein be declared as null and void with a
further prayer for perpetual injunction with regard to the
plaintiff's possession. The defendant no.1 in said suit filed
Regular Civil Suit No.411 of 1999 for partition and separate

possession of the suit land to the extent of 7/8th share having purchased the same by the aforesaid sale deeds. The trial Court held that the plaintiff in Regular Civil Suit No.33/1998 could not prove that the sale deeds were obtained by practicing fraud or coercion. It further held that defendant no.1 in that suit had proved that he was entitled for partition and separate possession of 7/8th share. Accordingly, Regular Civil Suit No.33/1998 was dismissed while Regular Civil Suit No.411/1999 was decreed. The two appeals filed by the aggrieved plaintiff in Regular Civil Suit No.33/1998, the appellate Court dismissed the same.

Shri Parchure, learned Counsel for the appellant submitted that the description of the four fields that were sold to defendant no.1 was identical and this was not permissible in law. The same property could not have been sold by virtue of four different sale deeds. It was submitted that the appellant was in possession of the entire property and hence, his legal rights were affected by execution of such sale deeds.

Shri M. G. Bhangde, learned Senior Counsel for respondent no.1 supported the impugned judgments. He referred to provisions of Section 44 of the Transfer of Property Act and submitted that as the 7/8th undivided share had been purchased by respondent no.1, the description of

the entire suit field was shown. The sale deeds having been held to be valid the claim as made by the appellant did not deserve to be accepted.

Perused the impugned judgments. It has been noted by both the Courts that except the appellant who had $1/8^{\text{th}}$ share in the suit properties, the other co-sharers had accepted the sale of their $7/8^{\text{th}}$ share. They did not contest the suit and supported respondent no.1. The appellate Court has found that as the entire field was not divided its entire description was shown in the sale deeds. Considering the fact that the trial Court has passed a decree for delivery of possession of $7/8^{\text{th}}$ share to the respondent no.1 with a rider that $1/8^{\text{th}}$ share of the appellant be taken into consideration as regards the portion of land where he has constructed his house, I do not find that the appeals give rise to any substantial question of law. Appeals are accordingly dismissed. No costs.

JUDGE

/MULEY/