

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

Misc. Civil Application No.1109 of 2016 (for Restoration)

In

Second Appeal No.179 of 2014

Along with

Second Appeal No.179 of 2014

(Devidas s/o Baban Kalmegh v. Sau. Meerabai w/o Nagorao Kene and
another)

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

Shri R.G. Somkuwar, Advocate for Applicant/Appellant.
Shri P.S. Patil, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 6th February, 2017

Misc. Civil Application No.1109 of 2016 :

Heard the learned counsels appearing for the parties.

For the reasons stated in this application, I am satisfied that a sufficient cause is made out for restoration of the matter, which was dismissed on 22-11-2016 in default.

Hence, the civil application is allowed. The second appeal is restored.

The civil application stands disposed of.

Second Appeal No.179 of 2014 :

Heard the learned counsels appearing for the parties.

The Trial Court dismissed the suit for declaration of title and for perpetual injunction restraining the defendants from disturbing the possession of the plaintiff over the suit property. The lower Appellate Court has concurred with the findings recorded by the Trial Court and the appeal has been dismissed. Hence, the original plaintiff is before this Court in this second appeal.

It was a specific plea raised by the plaintiff that the transaction of sale contained in the sale-deed at Exhibit 46 dated 22-1-2007 was a loan transaction, and the defendants were bound to reconvey the property to the plaintiff upon repayment of loan of Rs.15,000/- obtained along with Rs.5,000/- by way of interest.

There is a sole testimony of the plaintiff himself, who entered the witness-box to depose the aforesaid theory. Though there are attesting witnesses to the sale-deed, none of them is examined and there is no recital in the sale-deed about reconveyance of the property in favour of the plaintiff upon repayment of loan. In the absence of there being any other evidence available on record, the Courts below having

disbelieved the version of the plaintiff, no substantial question of law arises for consideration.

The second appeal is dismissed.

Shri Somkuwar, the learned counsel for the appellant, submits that both the Courts below have held that the sale of the suit property was not hit by the provision of Section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 on the ground that the defendants have established their ownership over the adjacent land. Shri Patil, the learned counsel for the respondents, does not dispute that such a question is required to be decided by the authorities under the said Act and the jurisdiction of the Civil Court to record findings on such question is expressly barred.

In view of this, none of the findings recorded by the Courts below on the aspect of fragmentation shall come in the way of the parties in any proceeding, if instituted under the provisions of the said Act.

Judge.