

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

Second Appeal No. 150 of 2016

[Daulatrao Mahadeorao Joge (dead) through L.Rs.Smt. Kamlabai Daulatrao Joge & others Vs. Sakhubai Bhauraoji Pise & others]

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

Court's or Judge's orders

Ms. D.A. Wadpalliwar, Adv., holding for Mr. S.P. Bhandarkar, Adv., for the appellants.

Mr. C.S. Samudra, Adv., for respondent nos. 1,2 4 (A to E).

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CORAM : A. S. CHANDURKAR, J.

DATE : 07th June, 2017

The original defendant no.1 in Regular Civil Suit No. 35 of 1984 filed by the respondent no.1 herein for possession of the suit property has filed the present appeal being aggrieved by the decree for possession passed by the trial Court, as affirmed by the appellate Court.

One Govindrao had two wives - Vithabai and Kisanabai. The plaintiff, defendant no.2 and defendant no.4 are the daughters of Vithabai. The defendant no.1 claims to have purchased the suit property by virtue of

sale-deed dated 10th December, 1979 [Exh.81] from Kisnabai. The plaintiff sought possession of the suit property on the basis of the same being allotted to her vide Partition-Deeds dated 9th March, 1976 [Exh.66] and 15th June, 1978 [Exh.69]. According to the plaintiff, in March 1983, the defendant no.1 had forcibly occupied the suit property.

The trial Court as well as the appellate Court on the basis of evidence of the parties found that the defendant no.1 did not acquire valid title on the basis of sale-deed dated 10th December, 1979. It was found that the vendor of defendant no.1 – defendant no.3 had sold property in excess of her entitlement. It was found that the two partition-deeds were not under challenge and, therefore, the defendant no.1 did not obtain valid title.

The learned counsel for the appellant submitted that without challenging the validity of the sale-deed dated 10th December, 1979, the plaintiff was not entitled for possession. It was submitted that a mere suit for possession in these circumstances was not maintainable. It was further submitted that though the defendant no.1 acquired title on 10th December, 1979, the suit for possession was filed beyond the period of limitation and hence was barred by law.

The learned counsel for the respondent no.1 supported the impugned judgments. Relying upon the

judgment of the Honourable Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRS. & others** [(2008) 4 SCC 594], it was submitted that in absence of any cloud over the title of the plaintiff, the suit for possession simplicitor was maintainable. It was then submitted that the suit was filed within limitation after the plaintiff was forcibly dispossessed by the defendant no.1 in March, 1983.

Having heard the learned counsel for the parties at length, I do not find that the Second Appeal gives rise to any substantial questions of law. Both the Courts after considering the evidence on record have found that the vendor of defendant no.1 had sold the suit property without having valid title over the same. As per the Partition-Deeds at Exhs. 66 and 69, the defendant no.3 who was the vendor did not have title over the suit property. In fact, defendant no.3 did not contest the suit at all. Considering the law laid down in *Anathula Sudhakar* [supra], the plaintiff having acquired title as per the partition-deeds, the suit for possession simplicitor was maintainable in absence of any cloud over her title. Similarly, in the plaint it was specifically pleaded that the plaintiff was forcibly dispossessed in March, 1983 and, therefore, the suit as filed in the year 1984 was within limitation.

Considering aforesaid findings which are findings of fact based on evidence available on record, there is

no scope for interference in the Second Appeal. The Appeal is, therefore, dismissed. No costs. The pending civil applications are also disposed of.

Judge

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