

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

SECOND APPEAL NO.84 OF 2016

EKNATH S/O NINAJI KUTE
vs
VITTHAL S/O NINAJI KUTE AND OTHERS

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

Court's or Judge's orders

Shri A. P. Chaware, Advocate for the appellant.

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

The appellant is the original plaintiff who is aggrieved by the dismissal of his suit for partition and separate possession with regard to house property consisting of four rooms. It is the case of the appellant that respondent nos.1 and 2 are his brothers while respondent nos.3 and 4 are his sisters. The suit house was purchased by his father on 23/2/1963. In a subsequent partition, the suit house was given to the share of Ninaji who expired on 22/2/1993. According to the plaintiff, defendant no.1 alone got his name mutated in the revenue records and hence, the present suit was filed.

The defendant no.1 took the stand that by virtue of oral partition, the suit house was given to the share of

defendant no.1 with the consent of the plaintiff. The defendant no.1 had borne the expenses of the plaintiff's education. Thereafter by amending the written statement, a plea was raised that in Regular Civil Suit No.29/2010 filed by the wife and children of the present appellant it was admitted by the present appellant that the suit property had gone to the share of defendant no.1 in the oral partition.

The trial Court on consideration of the evidence on record dismissed the suit. The appellate Court has affirmed said findings.

Shri A. P. Chaware, learned Counsel for the appellant submitted that the appellate Court was not justified in relying upon the written statement filed by the appellant in Regular Civil Suit No.29/2010. According to him, the admission in para 2 of the written statement was only with regard to partition of the agricultural field and not the residential house. He referred to the other evidence on record and submitted that the appellant was not entitled for equal partition.

Perused the impugned judgments as well as the plaint and written statement in Regular Civil Suit No.29 of 2010. This suit was filed by the wife and children of the present appellant seeking partition of the agricultural land as well as the house property which is the subject matter of the

present suit. In the written statement at Exhibit-29, the appellant has admitted that there was an oral partition between himself and his brothers and the suit property in Regular Civil Suit No.29/2010 came to the share of his brother Vitthal who was defendant no.1. The submission that this admission was only with regard to the agricultural land cannot be accepted as that admission has to be taken into consideration with regard to the suit property in Regular Civil Suit No.29/2010. As the present house property was also the subject matter of that suit, the admission made in the written statement would bind the present appellant. The reliance placed by the appellate Court on the decision in *Gautam Sarupvs. Leela Jetly & Ors 2008 ALL SCR 1678* is, therefore, justified.

Even the other evidence considered by both the Courts is sufficient to support the conclusion arrived at for dismissing the suit. In that view of the matter, no substantial question of law arises. Appeal is dismissed. No costs.

JUDGE