

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

SECOND APPEAL NO.234 OF 2016

RAMRAO NARAYAN ARUDKAR (DEAD) THROUGH LRS
VS
PRALHAD NARAYAN ARUDKAR

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

Court's or Judge's orders

Shri R. J. Shinde, Advocate for the appellants.
Shri A. R. Deshpande, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 27, 2017.

The appellants are the legal heirs of the original defendant who is aggrieved by the decree passed by the trial Court holding that the defendant had no right, title or interest in the property that was given to the plaintiff in the family partition dated 24-5-1973. The defendant was directed to deliver possession of that property and also not to cause any obstruction to the plaintiff.

Shri R. J. Shinde, learned Counsel for the appellants submitted that without measuring the suit property the trial Court had passed a decree in favour of the respondent. Relying upon the decision of the Hon'ble Supreme court in *Haryana Wakf Board Vs. Shanti Sarup* 2008(8) SCC 671, he submitted that in absence of such measurement, the decree was liable to be set aside. According

to him, the defendant had become owner of the suit property by way of adverse possession inasmuch as the suit property was never placed in possession of the plaintiff pursuant to the partition. He further submitted that the defendant also claimed title on the basis of oral sale of the suit property.

Shri A. R. Deshpande, learned Counsel for the respondent supported the impugned judgment. He submitted that as per the partition deed dated 24-5-1973, the plaintiff became owner of the suit property. The theory of oral purchase cannot be accepted as the consideration was above Rs.100/-. According to him, both the Courts have found that the evidence led by the defendant was insufficient to prove his defence.

Perused the impugned judgment. Heard the learned Counsel for the parties. It has been found that on the basis of initial partition on 24-5-1973 the plaintiff became owner of the suit property. The defendant urged that he had orally purchased the cattle-shed for Rs.500/- and open space along with Osri for Rs.400/-. This plea cannot be accepted in absence of any written document of sale. It has been further found that possession of the defendant was not adverse against his own brother inasmuch as the suit property was initially joint. The defendant did not lead any evidence but examined his son, who was not aware about

partition of 1973. Moreover, the suit is for possession of the suit property that has been illegally occupied by the defendant. It is not one for removal of encroachment as urged. The defendant has been labelled an encroacher as he has no legal right. The stand that the suit property was not measured before passing the decree was never urged before the appellate Court. The dimensions of the suit property having been mentioned in the plaint, the decree is therefore, sustainable. Hence, the ratio of the decision in *Haryana Wakf Board (supra)* does not assist the case of the defendant.

Thus, it can be seen that on the basis of the evidence led by the parties, it has been found that the plaintiff acquired the title on the basis of partition dated 24-5-1973. There is no perversity in the appreciation of evidence. Consequently, no substantial question of law arises for consideration. The second appeal is accordingly dismissed. No costs.

JUDGE