

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

SECOND APPEAL NO.229 OF 2017

Sheshrao Kesharao Thakare (dead) Thr. L.Rs. and ors.

-vs-

Deorao Keshavrao Thakare and ors.

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

Court's or Judge's Orders.

Shri N. S. Deshpande, Advocate with Shri P. M. Pande,
Advocate for appellants.

Smt. A. A. Joshi, Advocate for respondent Nos.1,5(A to D)

Shri R. R. Dawda, Advocate for respondent No.7.

CORAM : A.S.CHANDURKAR, J.

DATE : February 16, 2018

This appeal has been filed by the original defendants being aggrieved by the decree for possession passed by the trial Court and confirmed by the first appellate Court.

The defendant No.1 is the eldest son of one Kesharao Thakare. The plaintiff is his younger brother. According to the plaintiff the joint family was owning agricultural land and the same was ancestral in nature. On 07/07/1992 a partition was effected between Kesharao and his two sons as well as other family members. The suit property was allotted to the share of the plaintiff. According to the plaintiff he was forcibly dispossessed by defendant No.1 and hence the suit for possession came to be filed. Along with the written statement the defendant No.1 filed counter-claim and

sought partition of the suit property. The trial Court after considering the evidence on record held that the partition deed dated 07/07/1992 was valid. The suit property was allotted to the share of the plaintiff. Accordingly the suit was decreed and the counter-claim was dismissed. The appellate Court has confirmed said finding.

Learned counsel for the appellants submitted that there was no evidence on record to indicate forcible dispossession of the plaintiff. The possession of defendant No.1 was in his own right as the partition deed at Exhibit-119 had been obtained by the plaintiff fraudulently. In absence of any evidence with regard to dispossession the Courts ought to have granted the decree for partition after holding the partition deed dated 07/07/1992 to be not proved.

The learned counsel for the respondent supported the impugned judgment. According to him both the Courts have recorded a finding that the partition deed was valid and therefore decreed the suit for possession. The aspect of plaintiff's dispossession was not relevant considering the nature of relationship of the parties. It was therefore submitted that no substantial question of law arises in the second appeal.

After hearing the respective counsel I find that both the Courts have concurrently held that the partition deed

at Exhibit-119 was valid and that it was not obtained through fraud or misrepresentation. Even if the aspect of dispossession was not very clear, considering the fact that the plaintiff and the defendant No.1 were brothers that aspect would not be relevant. In the light of the evidence on record both the Courts have rightly granted the decree for possession in favour of the plaintiff. No substantial question of law arises for consideration. The Second Appeal is therefore dismissed.

JUDGE