

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

SECOND APPEAL NO.723 OF 2017

Baliram s/o Dewaji Mule (Since deceased Thr. his wife) Mira wd/o Baliram Mule

-vs-

Sunanda Prabhakar Burbude

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

Court's or Judge's Orders.

Shri M. Patil, Advocate holding for Shri Suresh Dhole,
Advocate for appellant.

Shri Mahesh Rai, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : September 14, 2018

The original plaintiff in the suit for partition and separate possession is aggrieved by the dismissal of that suit which judgment has been confirmed by the appellate Court.

It is the case of the plaintiff that field Survey No.37 was jointly purchased by the plaintiff and his brother Shrawan on 03/04/1972. The names of both the sharers were mutated therein. The plaintiff has half share in that suit field. After the death of his brother Shrawan the plaintiff made various requests to the defendant who was the daughter of Shrawan to grant his half share. As the same was not done, suit for partition and separate possession came to be filed. In the written statement it was denied that the suit property was jointly purchased. It was further pleaded that in the year 1977 there was a partition between the two brothers and in view of that partition the plaintiff had

no share in the suit property. The trial Court dismissed the suit holding that the plaintiff had not proved that the suit field was jointly purchased. The appellate Court confirmed said judgment.

2. Shri M. Patil, learned counsel for the appellant submitted that as the sale-deed of the suit property was in the joint names of the plaintiff as well as defendant, he had half share in the suit field. The evidence on record indicated that share. Though the defendant was sought to be cross-examined, just after the cross-examination commenced, she declined further examination. It is thus submitted that the suit was liable to be decreed by granting half share to the plaintiff.

3. Shri M. Rai, learned counsel for the respondent supported the impugned judgment. It was submitted that the plaintiff had no share in the suit property inasmuch as that share was already granted to him in the partition that took place on 13/03/1977. He referred to the proceedings in R.C.S. No.271/1999 wherein it was held that the plaintiff had no share in the suit property. That finding operated as *res judicata*.

4. Heard the learned counsel and perused the impugned judgment. The record indicates that in the present suit the sale-deed dated

03/04/1972 was not proved and brought on record. In the earlier suit bearing R.C.S. No.271/1999 it has been held that the plaintiff had no share in the suit property. The decree passed in that suit has attained finality. It is thus clear that the plaintiff failed to bring on record sufficient evidence to indicate his half share in the suit property. Both the Courts after considering the evidence available on record refused to grant relief to the plaintiff. The appreciation of evidence is not perverse.

The Second Appeal does not give rise to any substantial question of law. Same is accordingly dismissed with no order as to costs.

JUDGE

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