

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

SECOND APPEAL NO.217 OF 2017

Purshottam Kashinath Patil

... Appellant

-vs-

Pundlik Waman Patil and ors.

... Respondents.

Shri R. R. Vyas, Advocate for appellant.

Shri N. A. Gaikwad, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : January 12, 2018

P.C.

The defendant No.1 has filed the present second appeal being aggrieved by the decree passed by the appellate Court holding the sale deed dated 22/06/1999 executed by defendant No.2 in his favour to be not binding on the plaintiff.

2. It is the case of the respondent No.1/plaintiff that Survey No.49 situated at village Kund was ancestral property and he had right in the same. On 31/05/1999 the plaintiff purchased the same from one Vishwanath Patil and was put in possession. According to the plaintiff on 22/06/1999 the defendant No.1 purchased portion of that property from defendant No.2. According to the plaintiff the

defendant No.2 has no title in that land and hence the sale deed in that regard was null and void. In support of his case the plaintiff relied on an earlier partition deed dated 19/06/1951 pertaining to the predecessor of his vendor. According to the defendant No.1, the defendant No.2 had valid title in the suit property inasmuch as after the partition deed of 1951 there was a further oral partition in which the suit property was allotted to the share of defendant No.2.

3. The trial Court dismissed the suit holding that the defendant No.1 had title on the basis of sale deed at Exhibit-106. The first appellate Court however found that the subsequent oral partition as put forward by defendant No.1 had not been duly proved. By holding that the plaintiff had a share in the property the suit was decreed.

4. It is submitted on behalf of the appellant that after the partition dated 19/06/1951 there was a further partition though oral in nature and in that partition the suit property was allotted to defendant No.2. The defendant No.1 had examined himself and had stated about this partition. The defendant No.1 was not cross-examined on that aspect and therefore the trial Court rightly dismissed the suit. The appellate Court was not justified in reversing

that decree especially when no cogent evidence was led by the plaintiff.

5. The decree is supported by learned counsel for respondent No.1 on the ground that defendant No.1 was born after 1951 and he had no knowledge about that partition. As per partition deed at Exhibit-107 the plaintiff had right in the suit property. Hence the decree as passed was legally correct.

6. I have heard the learned counsel for the parties at length and I have perused the impugned judgment. The partition deed dated 19/06/1951 at Exhibit-107 has been held to be duly proved. According to defendant No.1 a few months thereafter there was an oral partition between sons of Gopal Patil. In his cross-examination, the defendant No.1 admitted that he was not born in the year 1951. Perusal of the evidence led by defendant No.1 indicates that there is no further material placed on record to substantiate the case of oral partition. There are no revenue records indicating further division of properties between the three sons of Gopal Patil. Merely because there is no detailed cross-examination on certain aspects, it cannot be said that the case as regards oral partition has been proved. Considering the entire material on record, the view taken by the first

appellate Court after appreciating the evidence on record cannot be said to be perverse or illegal.

7. In that view of the matter, the second appeal does not give rise to any substantial question of law. Same is therefore dismissed with no order as to costs.

JUDGE