

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.504 OF 2017

KISAN CHINDHUJI DABADE
VS
PANJAB DATTUSA SINHE

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

Court's or Judge's orders

Shri T. G. Bansod, Advocate for the appellant.
Shri J. B. Kasat, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : SEPTEMBER 07, 2018.

The learned Counsel for the parties have been heard on the following substantial question of law:

Whether the title of the plaintiff is proved by taking the support of provisions of Section 90 of the Indian Evidence Act in view of the fact that certified copy of sale deed dated 3-2-1956 at Exhibit-54 was the only document of title?

The appellant is the original plaintiff who has filed the suit for declaration of title in respect of field bearing Old Survey No.133/1) new Gat No.310/1 admeasuring 2 Hectare 43 R. It is the case of the plaintiff that his father purchased the aforesaid property from one Duka Raghu Mahar for a consideration of Rs.300/-. Though the sale deed was registered a copy thereof was not available with the plaintiff. He claimed to be in possession from

that day and as necessary mutation entries were not taken, the aforesaid suit came to be filed.

In the written statement, it was denied that the plaintiff had title to the suit property. It was pleaded that the defendant was the owner of old Survey Nos.132/2, 135 and 137. Gat No.310/1 was in fact owned by the defendant.

The trial Court after considering the evidence on record held that the plaintiff had failed to prove his title and hence, dismissed the suit. The appellate Court has confirmed the said judgment.

Shri T. G. Bansod, learned Counsel for the appellant submitted that as the certificate of registration at Exhibit-54 was of the year 1956, the presumption under Section 90 of the Evidence Act, 1872 was required to be drawn and being a document which was more than 30 years old, it ought to be taken into consideration. The plaintiff was in possession through his father since the year 1966 and as per the revenue records at Exhibits 36 to 45, the name of the plaintiff and his father were shown. It is submitted that both the Courts failed to consider the evidence in the proper perspective and dismissed the suit.

Shri J. B. Kasat, learned Counsel for the respondent supported the impugned judgment. According to him, the suit property claimed by the plaintiff was never owned by the plaintiff's

father nor was it purchased in the year 1956. The suit property was in possession of the defendant which could be seen from the revenue entries on record. The necessary particulars described in the suit land were also not furnished by the plaintiff and hence, the concurrent findings recorded do not deserve to be disturbed.

I have heard the learned Counsel for the parties and I have perused the records of the case. According to the plaintiff, his father purchased the land admeasuring 2 hectares 43 R from Survey No.133 on 3-2-1956. The copy of that sale deed was with the plaintiff's father and according to the plaintiff, it was subsequently not traced. The plaintiff therefore relied upon the certificate of registration at Exhibit-54. Even if that document at Exhibit-54 is taken into consideration the identity of the suit property which admeasures 2 Hectares 43R cannot be gathered from the material on record. The plaintiff has not described the suit property by giving its boundaries in the plaint. It has been found by both the Courts that provisions of Order VII Rule 3 of the Code of Civil Procedure 1908 has not been duly complied with. Further the revenue records of some years after 1965 indicate the name of the plaintiff. However, earlier entries show that the properties recorded in the name of the defendant. It is also pertinent to note that there is no evidence to indicate that old Survey No.133/1 was subsequently given Gat No.310/1. The identity of the suit property

is also not clear. It is after considering all these material on record that the Courts have refused to grant relief to the plaintiff.

In view of aforesaid, it is found that both the Courts after considering relevant evidence on record have refused relief to the plaintiff. The question as framed is answered by holding that the title of the plaintiff is not proved on the basis of document at Exhibit-54.

The impugned judgment does not call for any interference. The Second Appeal is therefore dismissed. No costs.

JUDGE

Muley