

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

Second Appeal No.462/2016

Wachchala Appaji Mahatale V/s Hanuman Govinda Satpure and others

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

Court's or Judge's Orders.

Shri C.S. Samudra, Counsel for Appellant.
Shri A.A. Dhawas, Counsel for Respondent Nos. 1 to 3.

CORAM : A.S.CHANDURKAR, J.

DATE : 18/06/2018.

The appellant is the original plaintiff No.1 who is aggrieved by the decree passed by the trial Court partly decreeing the suit for partition and separate possession and granting 1/5th share in Survey No.172 ad-measuring 2.08 H.R.

The claim of the plaintiffs is that their father -Govinda had five issues. The defendant Nos.1 and 2 were his two sons while the plaintiff and defendant No.3 were his daughters. The said Govinda expired on 09/04/1991. The Plaintiffs demanded share in the five ancestral properties and as the same was not given, the aforesaid suit for partition and separate possession was filed. In the written statement, it was pleaded that there was a Partition-Deed effected by Govinda on 29-10-1984 and hence the plaintiffs had share only in Survey No.172.

The trial Court held that in view of the Partition-Deed dated 29-10-1984, four properties were already partitioned and

the plaintiffs had share only in Survey No.172. It was further held that Exhibit No.72 which was the Partition-Deed did not require registration. The trial Court partly decreed the suit. The appellate Court confirmed that decree.

It is submitted by the learned Counsel for the appellant that both the Courts committed an error in holding that the Partition-Deed at Exhibit No.72 did not require registration. According to him, rights were created for the first time by virtue of that document and hence it required registration. It was further submitted that the Partition-Deed was not signed by the defendant Nos.1 and 2 and therefore was not admissible in evidence. On that count, it was submitted that plaintiffs were entitled for a share in all the five suit properties. The learned Counsel placed reliance on the decision *Siromani V/s Hemkumar, reported in AIR 1968 SC 1299*.

The learned Counsel for the respondents supported the impugned judgment. It was submitted that in the document at Exhibit No.72, it had been stated that the possession of the respective shares had been handed over five years prior to execution of that document. On 29/10/1984, a memorandum was prepared indicating the earlier partition. The same did not require registration which was rightly held by both the Courts. Similarly, the other evidence on record indicated acceptance of shares by all parties to the said deed and therefore absence of signatures of

defendant Nos. 1 and 2 did not affect the validity of that document.

I have heard the learned Counsel for the parties at length. Perusal of the document at Exhibit No.72 indicates that it has been specifically stated therein that the parties were in possession of their respective shares since prior to five years of its execution. This fact was further clear from the 7/12 extracts of the year 1981-1982 onwards at Exhibit Nos. 26 to 29. This indicates the acceptance of the respective shares. It is well settled that if the document refers to an earlier partition and is scribed subsequently, the same is to be treated as a memorandum not requiring the registration. This finding recorded by both the Courts is on a proper reading of deed at Exhibit No.72. It is thus clear that the Partition-Deed dated 29-10-1984 did not require registration. The ratio of the decision in *Siromani (supra)* cannot be made applicable to the facts of the present case.

It is also clear that as Survey No.172 was not the subject matter of partition, the plaintiffs have been granted shares then. They have been denied shares in the other four properties which were already partitioned. Hence, the substantial question of law as framed is answered by holding that the finding recorded by both the Courts that Exhibit No.72 did not require registration is legally correct.

Second appeal is, therefore, dismissed with no order
as to costs.

JUDGE

RKN