

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

SECOND APPEAL NO.105 OF 2017

Vasant s/o Tukaram Ugale

... Appellant

-vs-

Vitthal s/o Pandhari Wankhade and ors.

... Respondents.

WITH

SECOND APPEAL NO.106 OF 2017

Wasudeo s/o Rajaramji Deulkar

... Appellant

-vs-

Vitthal s/o Pandhari Wankhade and ors.

... Respondents.

Shri S. G. Joshi, Advocate for appellant.

Shri A. B. Mirza, Advocate for respondent No.1 in both the appeals.

CORAM : A.S.CHANDURKAR, J.

DATE : June 20, 2018

Common order :

These appeals have been heard on the following substantial question of law :

“ The appellate Court having found the defendants to be in permissive possession, whether such permissive possession could be said be void and illegal while upholding the validity of the sale-deed in favour of the plaintiff ? ”

2. For sake of convenience facts in Second Appeal No.105/2017 are being referred to.

The appellant is the defendant No.1 in the suit for possession filed by respondent No.1 herein. Possession sought by the original plaintiff is on the basis of sale-deed dated 20/08/2001 that was executed by defendant No.2 in favour of the plaintiff. It was urged that on 15/04/2003 the plaintiff was dispossessed and on that basis possession of the suit property was sought. According to defendant No.1, the defendant No.2 had entered into an agreement for sale of the suit property on 07/05/1985. The defendant No.1 claims to be in possession on the basis of that agreement. It was therefore contended that no relief could be granted in favour of the plaintiff. The trial Court dismissed the suit holding that the plaintiff was not put in possession when the sale-deed was executed. The appellate court reversed that decree and held in favour of the plaintiff. Being aggrieved the defendant No.1 has filed the aforesaid appeal.

3. It is submitted by the learned counsel for the appellant that since possession of the suit property was not delivered to the plaintiff when the sale-deed was executed on 20/08/2001, no title passed in favour of the plaintiff. The defendant No.1 got in possession in the light of agreement of sale executed by defendant No.2. In absence of

possession being delivered the plaintiff did not get valid title. Therefore the suit could not have been decreed.

4. The learned counsel for respondent No.1 submitted that possession was delivered when the sale-deed was executed. The plaintiff was subsequently dispossessed due to which the present suit was filed seeking possession. Moreover, it was open for defendant No.2 to deliver symbolic possession.

5. I have heard the learned counsel for the parties and also perused the impugned judgment. It is found that defendant No.1 in both the suits had filed separate suits for specific performance of the agreement dated 07/05/1987. While suit filed by Vasant was dismissed in default, the suit filed by Wasudeo was dismissed. Those proceedings attained finality. There was no legal basis for defendant No.1 to continue in possession on the basis of agreement dated 07/05/1987. Since there was a sale-deed in favour of the plaintiff and the suit for possession was filed shortly after dispossession, the same has been decreed on the basis of the plaintiff's title. The appellate Court rightly held that even symbolic possession could be handed over while executing the Deed.

6. In view of aforesaid the substantial question of law is answered by holding that the plaintiff was entitled to succeed on the basis of his title under the sale-deed executed by defendant No.2. In view of aforesaid, the Second Appeals stand dismissed with no order as to costs.

JUDGE