

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

SECOND APPEAL NO.472 OF 2017

Sitaram s/o Barkuji Tapre
-vs-
Kawdu s/o Baliram Bhutkar and ors.

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

Court's or Judge's Orders.

Shri A. S. Moon, Advocate for appellant.
Shri B. Lonare, Advocate for respondent Nos.1 and 2.

CORAM : A.S.CHANDURKAR, J.
DATE : September 14, 2018

The appellant is the original plaintiff who had filed suit for partition and separate possession of the suit property.

It is the case of the original plaintiff that one Lakduji had two sons Punaji and Baliram. After the death of Lakduji the said sons partitioned the suit property and were residing there. Punaji had initially married one Parvatibai. After her death he contracted second marriage with one Sogabai. The plaintiff claimed to be the grandson of said Sogabai. It is his case that the defendant Nos.1 and 2 obtained illegal possession of the suit house in the year 2006 and hence suit for partition and separate possession of House No.11 came to be filed. According to the defendants there was an oral partition between Punaji and Baliram. In that partition Punaji was given the goats while

Baliram was given Southern side portion of the house. Since then Baliram was residing there and hence plaintiff was not entitled for any relief.

2. The trial Court after considering the evidence on record accepted the stand of the defendants that there was an oral partition in which the suit house was allotted to Baliram. Similarly, it was held that Punaji got his share by way of she goats. The suit was accordingly dismissed. The appeal also came to be dismissed.

3. Shri A. S. Moon, learned counsel for the appellant submitted that there was no evidence to indicate that she goats were granted to Punaji and therefore the finding recorded that there was an oral partition earlier does not deserve to be accepted. Further, said partition is not found to be equitable and therefore the Courts ought to have passed a decree for partition. He further submitted that the assessment-sheet prepared by the Gram Panchayat clearly indicated plaintiff's share in the suit property. Hence both the Courts committed an error in dismissing the suit.

4. Shri B. Lonare, learned counsel for the respondents supported the impugned judgment. According to him the plaintiff's witnesses had admitted the earlier partition and the fact that Baliram was given share in the suit property where he was

residing. After appreciating the entire evidence, the suit had been dismissed. Hence no interference was called for.

5. I have heard the learned counsel for the parties and I have perused the impugned judgment. After considering the evidence led by both the parties, the Courts found on the basis of preponderance of probability that there was an oral partition between Punaji and Baliram in which Baliram was given the house property. Since then he was residing there. Though it was the plea of plaintiff that the plaintiff had been dispossessed at the instance of the defendants that evidence was not found to be sufficient. It has been admitted by the plaintiff's witness that since fifty years Baliram was residing in the suit property. After considering the deposition of PW-4 it was held that inclusion of names in the tax receipts at Exhibits-72 and 73 were not sufficient to pass a decree for partition. It is found that both the Courts have considered the evidence on record and held against the plaintiff. The appreciation of evidence cannot be said to be perverse. Hence the appeal does not give rise to any substantial question of law. Same is therefore dismissed with no order as to costs.

JUDGE