

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

SA NO.70/2019

Patiram s/o Lataru Bagde, since deceased through LRs
Vasantkumar s/o Patiram Bagde and ors

..VS..

Suresh s/o Natthu Bagde and anr

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

Court's or Judge's Order

.....
Shri K.S.Motwani, Counsel for the Appellants.

CORAM : V.M.DESHPANDE, J.

DATED : JUNE 11, 2019.

1. Heard learned counsel Shri K.S.Motwani for the appellants/defendants.
2. The appellants/defendants are questioning judgment and decree dated 14.12.2016 passed by learned Joint Civil Judge Junior Division, Tumsar in Regular Civil Suit No.46/2009 which is confirmed by judgment and decreer dated 29.10.2018 passed by learned 2nd District Judge, Bhandara in Regular Civil Appeal No.86/2017.
3. Only question canvassed before this Court by learned counsel for the appellants/defendants is that learned Judges of the Courts below erred in not considering document (Exhibit 102), a Deed of Relinquishment, executed by Natthu in favour of Patiram, the original defendant, thereby relinquishing right in favour of Patiram.
4. Lataru was having two sons Patiram and

.....2/-

Natthu. The plaintiffs, who filed the suit for partition and separate possession of their $\frac{1}{4}^{\text{th}}$ share in agricultural as well as in residential property, are legal representatives of Natthu. The suit was filed against Patiram who died during the pendency of the suit. The appellants herein are legal representatives of Patiram.

5. Undisputedly, agricultural property in question described at Schedule-A of plaint and residential plot on which residential house was constructed described at Schedule-B of plaint were ancestral property of Natthu and Patiram. During life time of Lataru, no partition took place between him and two sons Patiram and Natthu.

6. Thus, share of Natthu and Patiram were never defined. The suit filed on behalf of the legal representatives of Natthu was contested, after death of Patiram through his legal representatives, by filing written statement. According to the written statement, though agricultural property described at Scheduled-A was ancestral property, on 18.6.1999 Natthu executed Deed of Relinquishment which is titled as Deed of Release in favour of Patiram and, therefore, Patiram became exclusive owner of those agricultural properties. Consequently, the respondents/plaintiffs have no right to claim partition in those agricultural properties.

7. Insofar as residential property is concerned, it was the case of Patiram that though the plot, on which the house was constructed, was ancestral property, the house was constructed by his own funds and, therefore, he is

exclusive owner of the property. Learned Judges of the Courts below, after considering documentary as well as oral evidence, found that the plaintiffs have proved their case and granted decree of partition in favour of the plaintiffs thereby decreed that plaintiff Nos.1 and 2 are entitled for $\frac{1}{4}$ th share each and its vacant possession in respect of the agricultural property as well as the residential property.

8. The appellants/defendants feeling aggrieved by such decree, preferred an appeal before Lower Appellate Court which was registered as Regular Civil Appeal No.86/2017. Learned 2nd District Judge, Bhandara also concurred with the findings recorded by learned Judge of the Trial Court and dismissed the appeal.

9. After considering the submissions made by learned counsel for the appellants/defendants, it is clear that though there is Deed of Release (Exhibit 102) dated 18.6.1999 by Natthu, the predecessor in title of the plaintiffs, in favour of Patiram, the original defendant, the said is not a registered document.

10. Section 17 of the Registration Act is very clear about such transactions. In absence of registration of the said document, merely because the said document was impounded, learned Judge of the Trial Court was right in not admitting the said document as admissible in evidence. Learned counsel for the appellants/defendants could not countenance the reasons given by learned Judges of the Courts below in that behalf.

11. In view of mandatory provisions of Section 17, I see no reason to disturb the findings recorded by learned Judges of the Courts below observing that document Exhibit 102 is inadmissible in evidence.

12. Insofar as residential house is concerned, though it was the case of the defendant that from his own funds he constructed house in question, no satisfactory evidence to show that he alone contributed for construction is brought on record. Evidence in that behalf is properly appreciated by learned Judges of the Courts below.

13. In that view of the matter, no substantial question of law is involved in the present second appeal. The second appeal is dismissed and disposed of accordingly.

JUDGE

!! BRW !!

...../-