

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

Second Appeal No.635/2018

Charandas Somkuwar (D) Through LRs & Ors. Vs. The Govt. of Maharashtra

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

Court's or Judge's orders

Mr. M.P. Sagdeo, Advocate for appellants

CORAM : MANISH PITALE, J.

DATED : OCTOBER 09, 2019

The appellant (original plaintiff) has filed this appeal challenging the concurrent judgments and orders passed by the two Courts below.

2. A suit was filed by the appellant against the respondents (Government Authorities) for declaration that sale deed executed in favour of the respondents was nominal, because consideration amount was actually never paid to the appellant and for re-conveyance along with a prayer for damages, claiming that if the consideration amount had been actually received by him he would have kept it in a bank and earned interest on the said amount and further that because of said document being executed he could not cultivate the suit property.

3. The Trial Court passed its judgment and order decreeing the suit partly in favour of the

appellant by holding and declaring that sale deed dated 13/05/2005, executed between the appellant and respondents was illegal and this was on the basis that the respondents had not paid the consideration amount to the appellant at all. Further direction was given by the Trial Court to re-convey the suit property to the appellant. The prayer for damages was rejected by the Trial Court by holding that he had miserably failed to prove that the possession of the suit property was ever taken by the respondents from him.

4. Aggrieved by the rejection of prayer for damages, the appellant filed First Appeal before the Appellate Court. By the judgment and order dated 16/03/2017, the Appellate Court had dismissed the appeal. While doing so the Appellate Court reconfirmed the findings of the Trial Court that the appellant had failed to prove his case for damages.

5. The learned counsel for the appellant submitted that the document in question i.e. sale deed dated 13/05/2005, itself stated that possession of the suit field was handed over to the respondents and that such statement in the document was enough to show that the respondents were in possession. It is further submitted that due to the aforesaid reason, the appellant could not cultivate the suit property and that he had obviously suffered losses, which were required to be made good by a decree for payment of damages,

but, the two Courts below failed to appreciate the contentions of the appellant.

6. A perusal of the reasons given by the two Courts below while rejecting the claim for damages shows that the only document on which the appellant relied, while supporting his claim for grant of damages, was the very sale deed dated 13/05/2005, which he claimed to be nominally executed as consideration amount was never paid to him. The two Courts below concurrently agreed with the said contentions raised on behalf of the appellant and it was indeed found that the said sale deed was illegal and nominally executed, because the consideration amount was never paid to the appellant. In such a situation, the appellant was obviously required to place on record sufficient evidence to show that the respondents had indeed taken possession of the suit property and it was for that reason that he was deprived from cultivating the suit land.

7. But, a perusal of the plaint itself shows that the prayer for damages on behalf of the appellant was made firstly on the ground that if he would have received promised consideration he would have kept it in a bank and earned interest from the same of which he was deprived and secondly, as the said document was executed he could not cultivate the suit land.

8. In this backdrop, the observation made by the Appellate Court was appropriate that the appellant miserably failed to prove that he was prevented from cultivating the suit property because the respondents were in possession of the same and further that absence of prayer for possession or any such averment in the plaint itself demonstrated that the claim made by the appellant towards damages was not sustainable.

9. The Appellate Court also found that the appellant did not place on record any evidence or material to show the nature of crops cultivated by him prior to execution of nominal sale deed or nature of crops cultivated on the suit field and crops cultivated in the adjacent lands after the said document was executed. Such reasoning cannot be said to be perverse or being based on erroneous appreciation of material on record.

10. In view of the above, it is found that no substantial question of law arises in the present appeal and accordingly, it is dismissed.

JUDGE