

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

SA NO.132/2019
Ashok s/o Dayaram Kawale

..VS..

Pralhad s/o Dayaram Kawale and ors

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

Court's or Judge's Order

.....
Shri Amar Dhoble, Counsel for the Appellant.
Shri H.N.Bhondge, Counsel for the Respondents.

CORAM : V.M.DESHPANDE, J.
DATED : JUNE 24, 2019.

1. Unsuccessful plaintiff in both Courts below is approaching to this Court.
2. Heard learned counsel Shri Amar Dhoble for the appellant/plaintiff and learned counsel Shri H.N.Bhondge for the respondents.
3. The appellant/plaintiff filed a suit for partition against Pralhad and others who were his brother and sisters in respect of agricultural properties i.e. survey No.10/3, 10/2 10/1(a), and 10/1(b) area 3.35 HR, 3.45 HR, 3.14 HR, and 1.10 HR respectively.
4. It was case of the appellant/plaintiff that the suit properties originally owned by their father Dayaram and after his death on 10.11.1994 and after death of his mother Darodabai on 9.5.2004, the appellant/plaintiff is having share in the properties left behind by his parents.
5. It was contention of the defendant that in the

year 1986, during life time of Dayaram, partition took place between Dayaram, Ashok, and Pralhad. In the partition, land survey No.10/3 was allotted to the appellant/plaintiff and land survey Nos.10/1(a), 10/1(b) were given to defendant No.1-Pralhad. Land survey No.10/2 was allotted to share of Dayaram.

6. Learned Judge of the Trial Court found that in view of Exhibit 58, the defendants substantiated claim about partition.

7. Learned counsel for the appellant/plaintiff submits that the defendants could not point out any document to show that there was partition. For executing partition, there need not be any particular document. According to the Courts below, the partition took place in year 1986 was already acted upon which could be reflected at Exhibit 58 which shows that defendant No.1 had partitioned his share and granted some portion to his wife defendant No.4.

8. Had there was no partition in the year 1986, defendant No.1 Pralhad could not have partitioned the property which is mentioned at Exhibit 58.

9. Both the Courts below after appreciating evidence, recorded about factum of partition took place in the year 1986. Not only that, Pralhad further partitioned the property which was allotted to him.

10. Further, it is not the case of the appellant/plaintiff that he was not placed in possession in respect of land survey No.10/3. Had there was no partition

in the year 1986, there was no occasion for the appellant/plaintiff to be in settled possession of survey No.10/3 that substantiates view of both the Courts below.

11. In this view of the matter, there is no merit in the appeal. The second appeal is dismissed. No costs.

JUDGE

!! BRW !!

...../-