

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

SECOND APPEAL NO. 116/2019

Pandurang Vitthal Kale .vs. Ramesh Janbaji Bobade and Ors.

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

Court's or Judge's orders.

Mr. A. L. Deshpande, Advocate for appellant.

Mr. S. B. Badge, Advocate for respondent nos. 1 to 3.

Mr. A. S. Ghawde, Advocate for respondent no.4.

CORAM : V. M. DESHPANDE, J.

DATED : JULY 30, 2019

Heard Mr. Deshpande, learned counsel for the appellant, Mr. Badge, learned counsel for respondent nos.1 to 3 and Mr. Ghawde, learned counsel for respondent no.4.

The appeal is by original defendant no.1. Respondent nos. 1 to 3 are the plaintiffs whereas respondent nos. 4 and 5 are defendant nos. 2 and 3. A suit for specific performance of contract was filed by the plaintiffs. The suit was decreed by learned Jt. Civil Judge Senior Division, Wardha, vide judgment dated 30.03.2012 and decree for specific performance of contract was granted in favour of respondent nos.1 to 3. An appeal was carried before the appellate Court vide Regular Civil Appeal No.247/2017 and the learned District Judge-I, Hinganghat on 13.12.2018 was pleased to dismiss the appeal.

It is the submission of Mr. Deshpande, learned counsel for the appellants, that in the written statement the appellants have taken a specific plea that the suit property

i.e. Khasra No.15/1 situated at mouja Barbadi, Taluka Samudrapur, District Wardha, admeasuring 4.18 HR was a coparcenary property and the appellant is having one son who was not party to the agreement dated 27.04.2003 (Exh.-50) and there was no legal necessity for disposing of the coparcenary property. In order to substantiate the pleadings, the appellant took shelter of an admission given by Krushnarao Bobade (PW2). According to Mr. Deshpande, the admission proves that it was a coparcenary property.

It was a specific pleading on the part of the appellant that the suit property is a coparcenary property. Therefore, it was for the defendants to discharge the said burden. The admission, on which the learned counsel for the appellant is heavily relying is as under:

“मला एवढेच माहित आहे कि वादातील जमीन प्रतिवादींचे वडिलांची होती. मला प्र. वा. क्र. १ ला एक मुलगा असल्यासंबंधी माहिती आहे.”

I am afraid that this admission can be helpful to the appellant to suggest that the property was a coparcenary property. Except the aforesaid, the learned counsel for the appellant could not demonstrate and/or point out anything from the record to reach to the conclusion that the suit property was a coparcenary property.

It was the submission of the learned counsel for the appellant that though this point was specifically raised before the appellate Court, the said was not decided by formulating a specific point. The appellate Court is required

to formulate a point in the context of proved facts on record since the appellate Court's duty is to record a finding as to whether the learned Judge of the Court below has correctly appreciated the evidence or not.

In my view, since the appellant could not demonstrate that it was a coparcenary property, formulating a point in that behalf and asking the appellate Court to record a finding by remanding back the appeal to the appellate Court, as prayed by learned counsel for the appellant, in my view is a futile exercise. The plaintiffs have proved agreement (Exh.-50). The defence of the appellant that it was a loan transaction is also properly considered by both the Courts below.

In view of above, the present appeal does not give rise to any substantial question of law. Hence, the appeal is dismissed. No order as to costs.

JUDGE