

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

SECOND APPEAL NO. 165/2019

Deorao s/o Mahadeorao Dhawale .vs. Ramaji Mahadeo Dhawale & Ors.

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

Court's or Judge's orders.

Mr. N. S. Giripunje, Advocate for appellant.

CORAM : V. M. DESHPANDE, J.

DATED : JUNE 21, 2019

Heard Mr. N. S. Giripunje, learned counsel for the appellant in extenso.

Submission of learned counsel for the appellant is that original plaintiff-respondent no.1 is not his brother and the certain documents of the plaintiff show that his name is "Ramaji Mahadeo Dhotarkar" and not "Ramaji Mahadeo Dhawale". Therefore, he submitted that the plaintiff's suit for partition must fail. Besides this contention, no other contention was raised before this Court.

Respondent no.1 filed a plaint seeking partition and possession in respect of the suit properties, well described in the plaint. He claimed his 1/4th share in the suit property. The appellant filed written statement and denied the claim. In the written statement, it was the case of the appellant that the plaintiff is not "Dhawale" but he is "Dhotarkar". The plaintiff entered into the witness box. He was cross-examined and also he examined other witnesses. Defendant no.1-appellant, as it could notice from the

judgment of the learned Judge of the trial Court, though filed affidavit in lieu of evidence-in-chief, later on, did not press the same nor, even according to the learned counsel for the appellant, he entered into the witness box. Resultantly, the learned Judge of the trial Court recorded a finding that the contesting defendant-appellant did not adduce any evidence.

In his evidence, the plaintiff gave genealogical tree, which shows that his father was Mahadeo Dhawale having four sons; Deorao (appellant), Dhanraj (respondent no.2), Rama (respondent no.1-plaintiff) and Namdeo, who expired on 21.01.1997 leaving behind him his legal representatives as respondent nos.3 to 6. Cross-examination of the plaintiff was mainly concentrated on a document, which shows that his name in the record was recorded as “Dhotarkar” and not “Dhawale”. However, insofar as the genealogical tree is concerned, there was no whisper in cross-examination.

The plaintiff himself has explained in the plaint as to why his name is appearing as “Dhotarkar” and not “Dhawale” in the record and on that aspect also, the cross-examination on behalf of the contesting defendant was nil. Not only that, even in the written statement, to these pleading made in the plaint, there is an evasive reply. Thus, the said fact giving explanation also is not denied by the appellant. Not only that, Dhanraj-respondent no.2 entered into the witness box. On oath, he states that respondent no.1-plaintiff is his real brother. The appellant is not

disputing that Dhanraj is not his real brother. In view of the said, it is crystal clear that merely because in some record name of the plaintiff was recorded as “Dhotarkar”, the defendant is trying to deny the legitimate right of the plaintiff but seeking partition and possession of the suit property.

Both the Courts below have dealt with this issue in extenso and has supplemented good reasons for denying the case of the appellant-defendant, which in my view, need not be interfered with. No substantial question of law is involved in the present appeal. The second appeal is therefore dismissed. No order as to costs.

JUDGE

kahale