

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

Second Appeal No.256/2018
(Vimlabai Muneshwar and another Vs. Jitendra Muneshwar & Ors.)

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

Court's or Judge's orders

Mr.S.C. Bhalerao, Advocate for appellants

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 03, 2019

The present appeal is filed by the original plaintiffs challenging concurrent Judgments and orders passed by the Courts below. A suit was filed by the appellants for possession and injunction against the respondents. It was claimed that the respondents (original defendants), had encroached upon portion of the land belonging to the appellants. The basis of the claim of the appellants was that an alleged partition deed dated 23/03/1980 (Exh.65), whereby it was claimed that partition of properties took place and that the appellants had become owners and they were entitled to possession of the suit property.

2. The respondent No.1 had filed a counter claim seeking partition. It was claimed that the said document at Exh.65 was not a partition deed at all and that in any case, since it was an unregistered document, it could not be tendered in evidence.

3. A specific issue was framed by the Trial Court on the question as to whether the appellants proved that the suit property was partitioned on 23/03/1980, in presence of the witnesses. A negative finding was rendered on the said issue by the Trial Court, observing that the appellant / plaintiff No.1 herself had admitted in cross-examination that the document in question was not acted upon and that it was not a partition deed. It was also admitted by the said appellant that there was no specific name in the mutation entry on the basis of partition in the name of the appellants. The Trial Court also found that the said document at Exh.65 was admittedly an unregistered document and that if it was claimed to be a basis for partition and consequently the basis for claim raised by the appellants in the absence of registration, it was not a document that was admissible in law and its contents were not binding on the persons named in the said document.

4. The said finding has been confirmed by the Appellate Court on the basis of appreciation of the evidence on record.

5. Concurrent findings rendered by the two Courts below on Exh.65, go to show that no error can be attributed to the said findings. It is an admitted position that the said document at Exh.65 is not a

registered document. The said fact along with said crucial admission given by the appellant No.1 indicate that no substantial question of law arises in the present appeal for the consideration of this Court and to exercise jurisdiction under Section of 100 of the Civil Procedure Code.

6. In view of the above, the present appeal is dismissed.

JUDGE