

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

SECOND APPEAL NO. 310 OF 2018

Jaibai Deorao Sahare
vs.
Maroti Zibal Thakare and anr.

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

Court's or Judge's orders

Smt. R. S. Sirpurkar, Advocate for appellant.
Shri. S. N. Singh, Advocate for respondent.

CORAM : Manish Pitale J

DATED : 04.09.2019

The appellant was the original defendant who has challenged the concurrent orders passed by the two Courts below, whereby suit for possession and damages, filed by the respondents (original plaintiffs) has been decreed.

2. The respondents had filed a suit for possession claiming that the appellant herein had encroached upon a plot of land belonging to them. It was contended that in September 2004, the appellant and some other person had encroached upon the open plot of land and that in June 2005 when a compound wall was sought to be constructed and partly constructed by the appellant, the respondents had issued a notice to the appellant to remove the construction of the

compound wall. The respondents were then constrained to file aforesaid suit against the appellant seeking possession and for removing the construction made by the appellant.

3. The appellant resisted the suit by contending that suit plot was purchased by her husband from the respondent by a sale deed on 29.04.1987 and that therefore this could not be said to be a case of encroachment. The said alleged sale deed was admittedly an unregistered document. Reliance was also placed on certain document styled as receipt for payment of alleged consideration made to the respondents. The said documents were disputed by the respondents.

4. The trial Court framed issues, including an issue as to whether the respondents had proved that they were owners of the suit plot and as to whether the appellant had encroached upon the same. The trial Court found that the appellant had herself conceded to the title of the respondents in suit plot when it was claimed that the plot has been sold by the respondents to her husband on 29.04.1987. The trial Court also found that the document said to be a money receipt and sought to be proved by evidence of the scribe of the said receipt, was not a believable document and that alleged sale deed admittedly was unregistered and it could not be taken in evidence. It was found that the respondents had been able to prove their case and accordingly decree was

passed against the appellant directing that possession be handed over to the respondents.

5. The appellate Court also found in favour of the respondents on the basis of material on record and an application moved by the appellant in the appeal before the said Court seeking impounding of document claimed to be the sale deed, was rejected by order dated 19.12.2017. On the basis of reasoning similar to that adopted by the trial Court, the appeal filed by the appellant was dismissed by the appellate Court. The learned counsel for the appellant submitted before this Court that the documents in question could have been looked into at least for co-lateral purposes by the Courts below, insofar as the possession of the appellant was concerned. It was further submitted that the appellate Court could not have rejected the application for impounding document. It was further submitted that the decree of possession was erroneously granted by the two Courts below. Reliance was also placed on judgment of the Hon'ble Supreme Court in the case **Bondar Singh and others vs. Nihal Singh and others (2003) 4 Supreme Court Cases 161**.

6. On the other hand, the learned counsel appearing for respondents submitted that the concurrent orders passed by two Courts below did not deserve interfere as in the present case, the alleged sale deed was seriously disputed by the respondents and that the two Courts below had found even the alleged money receipt

to be a suspicious document. It was crucial that the appellant did not make any effort to examine at least one of the witnesses to the alleged document of sale deed sought to be relied upon by the appellant. It was further pointed out that the appellant had failed to file any counter claim to assert her right on the basis of the so-called sale deed. On this basis, it was submitted the appeal was liable to be dismissed.

7. Having heard the learned counsel for the rival parties and the material placed on record, it becomes evident that in the present case, the findings rendered by the two Courts below regarding ownership of the respondents and the suit plot cannot be said to be erroneous. If the entire case of the appellant was based on the so-called sale deed, efforts ought to have been made before the trial Court to support the existence of the said unregistered document by at least examining one of the witnesses to the said document. No such effort was made and in this context, the submission made on behalf of the respondents is correct to the extent that the appellant ought to have filed a counter claim to assert her right. Even otherwise, the question of impounding the document of sale deed, would have arisen only if the appellant had made any serious efforts to rely upon and prove the so-called sale deed on the basis of which she resisted the claim of possession made by the respondents.

8. The two Courts below had concurrently

found that the document styled as receipt to be suspicious, despite the fact that the scribe of the document was examined. The factual findings of the two Courts below do not deserve any interference by this Court.

9. In view of the above, it is found that no substantial question of law arises in the present appeal and therefore, jurisdiction u/s.100 of the C.P.C. does not deserve to be invoked in the present case.

10. Accordingly, the appeal is dismissed. No order as to costs.

11. Needless to say, the interim order, if any, granted by this Court stands vacated.

JUDGE

KOLHE