

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

SECOND APPEAL NO. 285 OF 2018

Shankar Naryan Phopase & others
VS.
Sau. Kondabai Kaluram Tarpe

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

Court's or Judge's

Shri. K. S. Narwade, counsel for appellant.

CORAM : Manish Pitale J

DATED : 25.09.2019

By this appeal the appellants (original defendants) have challenged concurrent decree of injunction passed in favour of the respondent (original plaintiff). It has been held by both Courts below concurrently that the suit filed by the respondent was based on title and she was able to prove by documentary and oral evidence on record that she was in possession and enjoyment of the suit property and that the appellants had been attempting to disturb her peaceful possession.

2. The aforesaid suit was filed by the respondent based on registered sale deed dated 22.12.2004 executed by father of the appellants. It was her case that she was in continuous

possession of the suit property on the basis of the said registered sale deed and that the appellants had made attempts to disturb her peaceful possession, which led to filing of the aforesaid suit.

3. The appellants resisted the said suit and claimed, inter alia, that the suit property was ancestral property and that therefore, the claim made in the suit by the respondent were not sustainable. It is significant that even if the appellants did take such a stand, having failed to file any counter claim to contend that at least to the extent of their share in the suit property, which they claimed to be ancestral property, the sale deed dated 22.12.2004 was not binding on them, they could not succeed.

4. In the absence of any such counter claim filed on behalf of the appellants, the Courts below have appreciated on the documentary and oral evidence on record. The Courts below have found that the respondent was entitled to claim continuous peaceful enjoyment of the suit property based on the aforesaid registered sale deed. It is also found that documentary evidence in the form of 7/12 extracts demonstrated that the respondent was in continuous possession of the suit property pursuant to the aforesaid sale deed dated 22.12.2004.

5. In this situation, it cannot be said that the findings rendered by the Courts below concurrently are perverse or that they are based on erroneous appreciation of the evidence on record. Therefore, this Court is of the opinion that, no substantial question of law arises in the present appeal and accordingly, it is dismissed. No order as to costs.

JUDGE

KOLHE