

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

Second Appeal No.582/2018
Nitaram Lanje Vs. Laxmibai Gajbhiye and others

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

Court's or Judge's orders

Mr. R.D.Karode, Advocate for appellant
Mr. Mr. Onkar Deshpande h/f Mr. Anand Parchure, Advocate for
respondent

CORAM : MANISH PITALE, J.

DATED : OCTOBER 09, 2019

By this appeal, the original defendant has challenged judgment and order dated 28/09/2015, passed by the Court of the Principal District Judge, Bhandara (Appellate Court), whereby appeal filed by the appellant was dismissed and decree passed in favour of the respondents for handing over possession of the suit property to them was upheld.

2. The predecessor of the respondents herein i.e. one Lahanu had filed suit bearing Regular Civil Suit No.259/1998, against the appellant herein for declaration, permanent injunction and possession, claiming that the suit property was allotted to him as a *Patta* by the State and that the appellant was not entitled to continue in possession thereof.

3. The appellant had filed counter claim

stating that he was in possession of the suit property by virtue of an agreement with Lahanu and on that basis he sought decree of specific performance of contract. The suit was dismissed while the counter claim filed by the appellant was decreed. This was carried in appeal and the Appellate Court partly allowed the appeal, modified the decree granted by the Trial Court on the counter claim and thereby only granting refund of earnest money with interest to the appellant and upholding dismissal of the suit. While doing so, the Appellate court further recorded that the plaintiff could take proper steps to get the possession of the suit land restored to him.

4. It is thereafter that the respondents, being the legal heirs of said Lahanu, filed Regular Civil Suit No.49/2009, before the Court of the Civil Judge (Jr. Dn.), Sakoli (Trial Court), seeking possession of the suit property. The respondents refereed to and relied upon the aforesaid earlier proceedings between the said Lahanu and the appellant herein, while seeking possession of the suit property.

5. The appellant *inter-alia* resisted the suit by claiming that such a suit was not maintainable as the relief of possession ought to have been sought in the earlier proceedings itself. The Trial Court decreed the suit on 14/09/2011, in favour of the respondents and directed the appellant to hand over peaceful possession

of the suit property to the respondents.

6. Aggrieved by the same, the appellant filed Regular Civil Appeal No.120/2011, before the Appellate Court, which was dismissed by the impugned Judgment and order and decree stood confirmed in favour of the respondents.

7. The learned counsel for the appellant submitted that the findings rendered by the two Courts below on the question as to whether the suit filed by the respondents was barred by the principle of *res judicata* and under Order II Rule 2 of the Code of Civil Procedure were erroneous and perverse and they were based on an inappropriate appreciation of evidence and material on record. The learned counsel referred to the earlier proceedings and the specific operative portion of the order passed by the Appellate Court in the suit initiated by the predecessor of respondent i.e. Lahanu. It is claimed that the logical corollary of the said judgment and order, the question of grant of possession ought to have been settled in the same round of litigation.

8. On the other hand, the learned counsel for the respondents submitted that the findings rendered by the Courts below were based on proper appreciation of the material on record and, therefore, there was no question invoking principle of *res judicata* in the facts

and circumstances of the present case.

9. The impugned judgments and orders passed by the two Courts below show that the specific plea regarding *res judicata* and under Order II Rule 2 of the Code of Civil Procedure has been dealt with elaborately and it is found that the specific cause of action for the respondents in the present case concerning their entitlement of possession was not an issue either involved or decided in the earlier round of litigation wherein the suit was filed by their predecessor Lahanu. The Courts below have also found on a detailed appreciation of the effect of the operative portion of the order of the Appellate Court in the earlier round that the present suit was clearly maintainable and that the respondents were entitled to seek a decree of possession against the appellant. The material appreciated by the two Courts below, the manner of appreciation of the same and the findings rendered based on such analysis cannot be said to be perverse in any manner because the material on record was appreciated after taking into consideration the pleadings in the earlier rounds as also the findings rendered by the Appellate Court, which had partly allowed the appeal of the said Lahanu and dismissed counter claim of the appellant. It cannot be said in any manner that the suit filed by the respondents herein would hit by the principle of *res judicata* and Order II Rule 2 of the Code of Civil Procedure and, therefore,

the only ground sought to be raised in the present appeal is found to be without any substance.

10. As no substantial question of law arises in the present appeal, it is dismissed.

JUDGE

MP Deshpande