

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

SECOND APPEAL NO.335/2019

Hemantsingh Chandrasingh Bais

..VS..

Chandrasingh Gulabsingh Bais and ors

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

Court's or Judge's Order

.....
Shri A.R.Deshpande, Counsel for the Appellant.

CORAM : V.M.DESHPANDE, J.

DATED : JULY 29, 2019.

1. The present second appeal is filed against concurrent findings recorded by learned Civil Judge Junior Division, Patur and learned 4th District Judge, Akola.
2. Both learned Judges of the Courts below dismissed suit filed on behalf of the appellant/plaintiff for partition, separate possession, and permanent injunction.
3. I have heard learned counsel Shri A.R.Deshpande for the appellant/plaintiff.
4. Suit property is field survey No.26/3 admeasuring 1.69HR at Patur, district Akola. According to the appellant/plaintiff, he is having 1/8th share along with defendant Nos.1 to 7. Defendant No.8 is Vidarbha Urban Cooperative Bank Ltd..
5. It is not in dispute that respondent No.5/defendant No.5 obtained loan Rs.18.00 lacs as secured cash credit from respondent No.8/defendant No.8-Vidarbha Urban Cooperative Bank Ltd., in pursuance to registered

Mortgaged Deed dated 25.9.2000 (Exhibit 37). Admittedly, respondent No.5/defendant No.5 failed to clear the loan and outstanding amount till 19.11.2000 was Rs.46,61,406/-. Thereafter, respondent No.8/defendant No.8 took possession of the suit property. The suit for partition was filed on 3.12.2008.

6. Admittedly, respondent No.1/defendant No.1 Chandrasingh, the father of the appellant/plaintiff, admitted execution of the Mortgaged Deed, as it could be seen from judgment of learned Judge of Trial Court. Perusal of the Mortgaged Deed shows that defendant No.1 for himself and being power of attorney for other brothers of defendant No.5 stood as guarantor for the loan sought by defendant No.5.

7. The Mortgaged Deed is a registered document. Admittedly, defendant No.1 is a Karta and, therefore, stood as guarantor for and on behalf of family including the appellant/plaintiff.

8. Under these circumstances, the claim for partition was disallowed by learned Judges of both the Courts below. In my view, public money cannot be at stake at the hands of such persons.

9. In this view of the matter, no substantial question of law is involved in the present second appeal. The second appeal is dismissed and disposed of accordingly.

JUDGE

!! BRW !!

...../-