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

**SECOND APPEAL NO. 178 OF 2018**

Nana @ Dilip s/o Wamanrao Thakare & others
vs.
Umesh s/o Kashinath Umare and another

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

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Shri. S.P. Kshirsagar, Advocate for the appellants.
Shri. S. S. Kare, Advocate for respondents.

**CORAM : Manish Pitale J**

**DATED : 18.09.2019**

The appellants (original plaintiffs) have approached this Court against concurrent orders passed by the two Courts below whereby the suit for declaration, permanent injunction and cancellation of power of attorney was dismissed. It was the case of the appellants that the power of attorney in question dated 17.08.2004 was liable to be cancelled, as it was allegedly obtained by fraud by the respondents (original defendants).

2. It was the case of the appellants that they were under an impression that the said document signed by them was a correction deed, but fraudulently, a power of attorney was executed in respect of certain plots of land. It was contended that since wrong impression was fraudulently created by

the respondents, the power of attorney was signed and executed, which was required to be cancelled as the respondents could not be permitted to take any further steps or obtain benefit on the basis of the said power of attorney dated 17.08.2004. It was further contended that, in fact, the power of attorney stood cancelled. The trial Court as well as the appellate Court specifically framed issues and points on the aforesaid contention regarding fraud played against the appellants.

3. But upon analysis of the evidence and material on record, particularly, crucial admissions given by the witness appeared on behalf of the appellants, the Courts below found that the contention of fraud raised on behalf of the appellants was not proved. It was found that the power of attorney was in connection with plot Nos. 1 to 46 that were demarcated in the said land and that the witness had himself admitted that he was very much aware about the fact that the power of attorney in respect of such plots was being executed. In that light, the Courts below found that the evidence adduced on behalf of the appellants fell short of discharging the burden that was required to be discharged by the appellants on the specific contention of fraud raised on their behalf.

4. A perusal of the relevant portions of the judgments of the two Courts below would show that,

oral and documentary evidence on record was appreciated in detail and the findings rendered by the Courts below cannot be said to be based on any erroneous appreciation of the evidence and material on record. Once it is found that the appellants failed to support their contention regarding fraud in the present case, no error can be attributed to the concurrent orders passed by the two Courts below. In this light, it becomes obvious that there is no question of law much less substantial question of law that arises in the present appeal and therefore, it deserves to be dismissed.

5. At this stage, learned counsel for the appellants sought to pursue an application, styled as an application under Order XLI, Rule 27 of Civil Procedure Code, seeking permission to file on record certain documents. It was contended that the said documents were extremely crucial for deciding the controversy between the parties and that therefore, the application was required to be allowed and the appeal was required to be considered in the light of the said documents. A perusal of the documents filed along with said application would show that, there are orders passed by the Revenue Authorities in the year 2011. A perusal of the said orders show that it has been specifically stated therein that the findings rendered would be subject to decision of competent Civil Court.

6. In view of the nature of the documents, it becomes clear that the said documents would have no bearing on the findings rendered by the two Courts below in the present case. There is no question of the appellants seeking to prove their case of fraud on the basis of such orders passed by the Revenue Authorities. In any case, as noted above, the Courts below have properly appreciated the material on record to hold that the suit filed by the appellants deserved to be dismissed.

7. In view of above, the appeal as well as the application filed on behalf of the appellants are dismissed. No order as to costs.

**JUDGE**

*KOLHE*