

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

SECOND APPEAL NO. 22 OF 2020

Sudhir Nilkanth Dhope,
..VS..
Pramod Mahadeorao Dal and Ors.,

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

Court's or Judge's orders

Shri M. P. Kariya, Counsel for the appellant.

CORAM : MADHAV J. JAMDAR, J.

DATED : 09th March, 2020

1. Heard Shri M. P. Kariya, learned counsel for the appellant at length. This second appeal is arising out of obstructionist proceedings. The obstruction application filed by the appellant under Order 21 Rule 97 and 101 of the Code of Civil Procedure is dismissed by learned Civil Judge, Junior Division, Ner by judgment and decree dated 08.08.2016 and the appeal filed challenging the same also came to be dismissed by judgment and decree dated 18.12.2019 passed in Reg.Civil Appeal No.15/2009. It is the grievance of the appellant that under the pretext of executing the decree passed against his father passed by judgment and decree dated 20.04.2007 by learned Civil Judge, Junior Division, Ner in Reg.Civil Suit No.13/2003, the same is being executed against land belonging to him. According to him, the substantial question of law involved in this appeal is the

findings recorded by the Courts below are perverse in respect of Partition-deed i.e. Exh.30 and perversely findings is recorded that partition had never taken place.

2. To appreciate the substantial question of law which according to learned counsel for the appellant is involved in the present Second Appeal, it is necessary to set out factual position. The respondent No.1 had filed Reg. Civil Suit No.13/2003 for specific performance of contract by which he agreed to purchase by agreement dated 06.06.2001 the agricultural land bearing Survey No.69/2, admeasuring 02H 42R, situated at village Ajani, Taluka Ner. The said 2003 suit was filed by the respondent No.1 against Nilkanth Atmaram Dhope, father of the appellant. The said suit was decreed by judgment and decree dated 20.04.2007, by passing following operative order :-

“1. The suit is decreed with costs.

2. The plaintiff shall deposit the balance consideration of Rs.13,000/- in this Court within a period of One month from the date of this order. On the deposit of the same, the plaintiff shall give a notice to the defendant, informing him in respect of deposit of the amount. The defendant shall execute a Sale deed in favour of the plaintiff in respect of the suit property specifically described in para no.3 of the plaint within a period of 15 days

from the date of receipt of the Notice.

3. If the plaintiff fails to deposit the balance consideration within the said period, unless the time is extended by this Court, the suit shall stand dismissed with costs. If the defendant fails to execute the sale deed as mentioned earlier, the same shall be executed by this Court.

4. A decree be drawn up accordingly.”

It appears that, the said decree was challenged in appeal before the District Court as well as in Second Appeal in this Court by the father of the present Appellant and this Court has dismissed Second Appeal No.350/2007 by judgment and order dated 11.12.2009.

3. The factual position on record further shows that the respondent No.1 in the meanwhile filed execution proceedings bearing No.88 of 2008. In the said execution proceeding the appellant who is the son of the original judgment debtor filed on 09.04.2013 an application under Order 21 Rule 97 and 101 of the Code of Civil Procedure, seeking that said darkhast be dismissed. It is the main contention of the appellant who is obstructionist that while executing the decree dated 20.04.2007, passed in Reg. Civil Suit No.13/2003, the same is being executed against the land which has been

allotted to him under the Partition-deed dated 08.12.1993 (Exh.30). Both the Courts have after perusal of the Agreement of Sale executed in favour of the decree holder as well as the Partition-deed at Exh.30 have recorded concurrent finding on the basis of boundaries of the land which is allotted to the appellant by the Partition-deed and the land about which agreement was executed by the father of the present appellant in favour of the respondent No.1 that both the lands are not one and the same and they are different properties. Although, it is the contention of the learned counsel for the appellant that the said findings is perverse, however, the learned counsel for the appellant could not point out any perversity as the Courts below have taken into consideration the boundaries as mentioned in the agreement and in the Warrant of Possession as well as the boundaries mentioned in the Partition-deed and recorded concurrent findings that both the lands are not one and the same and they are different lands. Therefore, there is no substantial question of law involved in this Second Appeal filed by the appellant and the same is dismissed. No order as to costs.

JUDGE