

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

SECOND APPEAL NO.403 OF 2019

Vasanta s/o Yadaorao Nakhate and others.

Vs.

Vitthalrao Yadaorao Nakhate and others.

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

Court's or Judge's orders

Shri S. V. Bhutada, Advocate for appellants.

Shri R. L. Khapre, Advocate for respondents 1(b) and 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 07, 2020.

Heard Shri Bhutada, learned counsel for the appellants and Shri Khapre, learned counsel for the respondents 1(b) and 3 who are on Caveat.

The only point addressed is that the judgment of the First Appellate Court, which set aside the decree as passed by the Trial Court and dismissed the suit for partition, is illegal, for consideration of the earlier partition between the parties.

Shri Khapre, learned counsel for the Caveator opposes the same.

The plaintiffs / appellants, filed a suit for partition and separate possession, which came to be decreed by the Trial Court by judgment dated 15.12.2007, in spite of the fact that the judgment and decree dated 01.07.1998 in RCS No. 18 of 1993, between the defendant no.1 and plaintiffs no.1 and 3, recorded that partition, had already been effected, in respect

of the suit properties, on 26.05.1980, since which date, the parties thereto were in cultivating possessing of the lands fallen to their share separately. This judgment dated 01.07.1998, was carried in Appeal bearing RCA No.65 of 2001 which came to be dismissed on 29.01.2005, second appeal against which bearing Second Appeal No.224 of 2005 came to be dismissed on 18.08.2006. Thus, the findings as rendered that there was already partition of the ancestral lands on 26.05.1980 in pursuance to which the parties to the same were put in cultivating possession of their respective shares attained finality. It is not in dispute that the original plaintiff no.1/Yadavrao in the suit before the Trial Court i.e. Special Civil Suit No.20 of 1994, was the defendant no.1, in RCS No. 18 of 1993 and the plaintiff no.2, is the wife and plaintiff no.3 is the son of Yadavrao. It is also not in dispute that the defendant no.1 in Special Civil Suit No.20 of 1994, was the plaintiff in RCS No.18 of 1993. The other defendants in Special Civil Suit No.20 of 1994 are claiming through Yadavrao. That being the position, the findings as rendered in RCS No.18 of 1993, as confirmed in Second Appeal No.224 of 2005, would clearly be binding upon the parties hereto. The learned First Appellate Court has therefore correctly rendered the finding that the partition was already effected between the parties hereto on 26.05.1980 and dismissed the suit as filed by the appellant / plaintiff. It cannot be disputed that the findings as rendered in RCS No.18 of 1993, would operate as res judicata under Section 11 CPC, as the parties

were same and the subject matter was also same. That being the position, I do not find any infirmity in the judgment as rendered by the First Appellant Court. No substantial question of law is involved. The appeal therefore fails and is dismissed. In the circumstances, there shall be no order as to costs.

JUDGE

Sarkate