

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

Second Appeal No. 27 of 2018

Smt. Kusmanbai Wd/o Bishram Bopache
Versus
Fulwantabai wd/o Dama Thakre and others

Office Notes, Office Memoranda of
der
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Or-

Shri D.V. Mahajan, Advocate for appellant
Shri S.S. Dhengale, Advocate for respondent Nos. 1 to 10

CORAM : ANIL S. KILOR, J.

DATED : 01 DECEMBER 2021

This is an appeal arising out of judgment and decree passed in Regular Civil Appeal No. 105/2014 dated 06/10/2017, by the Principal District Judge, Gondia, dismissing the appeal preferred by the plaintiff in a suit for declaration and possession, thereby maintaining the judgment and decree dated 21/03/2014 passed by Joint Civil Judge, Junior Division, Gondia in Regular Civil Suit No. 62/2008.

2. Brief facts of the present case are as follows. (The parties are referred as per their status before the trial Court.)

Plaintiff is absolute owner of the suit property and said property was handed over to defendant nos. 1 and 5 for agriculture operation. The plaintiff used to give Rs. 2000/- per year to defendant nos. 1 and 5 for agriculture operation since 1999. Late Sakharam Thakre was having good relations with plaintiff, he died in 1981 and the possession of suit property received by defendant nos. 1 to 10 being the legal heirs of deceased Sakharam. The old khasara number converted into gat no. 498 in re-measurement of Mouza Rajegaon. In the year 2006, plaintiff went to suit property for cultivation purpose and she demanded the possession from defendants and that time, defendants informed her that, their father namely Sakharam Thakre purchased the land from her and they denied to hand over the possession. Thereafter, the plaintiff came to know about the mutation entry which was cancelled in view of appeal filed by the plaintiff.

3. As per the plaintiff, she has not executed the sale deed dated 20.1.1970 in favour of late

Sakharam Thakre and the said document is false and bogus. As per the plaintiff, late Sakharam Thakre has not acquired any ownership on the basis of alleged false sale deed. Hence, she prayed for declaration of ownership, cancellation of sale deed and possession of suit property.

4. Defendant nos. 1 to 6 filed written statement below Exh.20 and defendant nos. 7 to 10 filed written statement below Exh. 45.

5. Defendant no.1 died and his legal heirs filed written statement below Exh. 85. They resisted the claim on the following grounds.

6. The plaintiff was the absolute owner of suit property and she sold the said land to deceased Sakharam Bansi Thakre by virtue of sale deed dt. 20.1.1970. Since then, late Sakharam was in possession of suit property and there was no dispute about possession and cultivation therefore, said Sakharam did not apply for mutation in Talathi record. After the death of Sakharam, defendant nos. 1 to 6 acquired the suit property by way of succession. The possession of defendant nos. 1 to 6 are on the basis of title deed in favour of late Sakharam.

7. The defendant nos. 7 to 10 submitted that, they have no concern with the suit property and it was allotted in the share of defendant nos. 1 to 6. As per the defendant, sale deed was executed on 20.1.1990 and plaintiff received the consideration on the date of sale. As per the defendants, the suit is time barred and bad in law for non-joinder of necessary party and mis-joinder of party.

8. I have heard the learned Counsel for the respective parties.

9. Shri Mahajan, learned Counsel for the appellant submits that the challenge was raised to the sale-deed and declaration which was sought was to the effect that the said sale-deed is bogus and illegal. However without considering the contents of the sale-deed, both the Courts have held in favour of the defendant. It is submitted that the fact that the defendant did not take steps to carry out the correction in the mutation entry after the alleged sale deed, goes in favour of the plaintiff which has not been considered by both the Courts below.

10. Shri S.S. Dhengale, learned Counsel for the respondent Nos. 1 to 10 submits that both the Courts have considered the fact that the plaintiff has not called

for the original copy of the sale-deed for examination and first time at the appellate stage when the matter was heard finally, an application was moved for referring alleged copy of sale-deed to the hand writing expert for examination, which was rejected by the Trial Court. These facts are sufficient, according to him, to hold that the concurrent findings recorded by both the Courts below are just and proper and it needs no interference.

11. To consider the rival contentions of the learned Counsel for the respective parties, I have gone through the record and also perused both the judgments and decree passed by Courts below. In this matter, as per the case of the plaintiff, the plaintiff has never put her thumb impression on the alleged sale-deed and the sale-deed is bogus. However record shows that the plaintiff has not taken any efforts to call the original sale-deed for examination and made a request first time in this regard before the Lower Appellate Court.

12. Moreover, admittedly the defendants have examined witnesses. DW.2- Bhuwanlal specifically identified the signature of his father who was attesting witness and another witness to the document was

Hiralal, DW 3 - Kisanlal is son-in-law of said Hiralal who had also identified the signature of father-in-law who died in the year 1998.

13. The document is a registered document and two of the witnesses have specifically identified the signatures of the relevant attesting witness who signed the document. Considering all these above referred factors, both Courts have held in favour of the defendant.

14. The contentions of the learned Counsel for the appellant that the contents of the document were not proved, however this point has been raised by the plaintiff first time in this appeal.

15. Shri Mahajan, learned Counsel for the appellant has fairly stated that this point was not raised or argued before both the Courts below and therefore there is no findings rendered by both the courts below on this contention.

16. It is a well settled law that the points which were not raised before the Trial Court or the First appellate Court, cannot be raised first time in Second Appeal. In that view of the matter, and after considering the observations made by both the Courts below while holding in favour of the defendants, I do

not find any merit in the submission of the learned Counsel for the appellant.

17. As regards the facts of mutation, the only fact that the defendant did not carry out the mutation entries in their name, is not sufficient to arrive at a conclusion that the alleged sale-deed is a bogus and illegal.

18. In that view of the matter, I do not find any substantial question of law involved in the present appeal. Accordingly the appeal is dismissed. No order as to costs.

[ANIL S. KILOR, J.]