

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

Second Appeal No. 475 of 2018

Ishwar Mahadeorao Dayaki,
Versus
Ramkrishna Baliram Hajare and others.

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

Court's or Judge's Order

Shri N.B. Bargat, Advocate for the appellant.
Shri S.M. Nafde, Advocate for the respondent no.1.
Shri R.S. Borkar, Advocate h/f Shri J.K. Matala, Advocate for
respondent Nos. 4 to 6

**CORAM : ANIL S. KILOR, J.
DATED : 01 DECEMBER 2021**

This appeal is arising out of the judgment and decree dated 06/10/2017, passed in Regular Civil Appeal No. 50/2013 by the District Judge-9, Nagpur, dismissing the appeal preferred by the original defendant No.3 in a suit for declaration, possession and mesne profit.

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

3. The plaintiff/respondent no.1 filed a suit for declaration, possession and mesne profit. It is the case of the plaintiff that in the year 1985 Government acquired land Survey No. 118 and allotted the plots to the needy person. Plot No.1 was allotted to the father of the plaintiff by order dated 24/05/1985. The father of the petitioner died on 19/04/1990 when he was 14 years of the age. He further pleaded that in the first week of March 2005 defendant No.3-appellant took possession of 1000 sq.ft. area from suit plot and on inquiry, he claimed that he is the owner of the said area by virtue of registered sale executed by defendant Nos. 4 to 6 in his favour. In further inquiry it is revealed that the father of the plaintiff alleged to have sold the said land to the father of defendant Nos. 4 to 6.

4. It is a case of the plaintiff that defendant Nos 4 to 6 were never in the possession of the suit plot and in the said backdrop the suit was filed. The same was decreed in favour of the plaintiff vide judgment and decree dated 27/09/2012 in Spl. Civil Suit No. 377/2008 and thereby the learned trial Court declared that the plaintiff got occupancy right by way of succession from his father and he is entitled for

possession of the suit plot admeasuring 30X50. The learned trial Court further directed appellant/defendant No.3 to hand over the vacant possession of the area of 1000 Sq. Ft. The trial Court has further declared the sale-deed in favour of the defendant No.3 executed by defendant Nos. 4 and 6 as null and void.

5. The defendant No.3, feeling aggrieved by the same preferred an appeal i.e. Regular Civil Appeal No.50/2013 which came to be dismissed vide judgment dated 06/10/2017 the same is under challenge in the appeal.

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

7. Shri Bargat, learned Counsel appearing for the appellant submits that both the Courts below have not considered case of the appellant/defendant No.3 that he has purchased part of the land admeasuring 1000 Sq.Ft. from defendant Nos.4 to 6. He submitted that the defendant Nos.4 to 6 had purchased the said land from the father of the plaintiff and therefore the declaration granted by both the Courts below in favour of the plaintiff that he is the owner of the suit land is erroneous and perverse.

8. Shri Nafde, learned counsel for the respondent on the other hand supports the judgment and decree of both the Courts below and submits that both the Courts below after considering the oral as well as documentary evidence available on record, has held that the defendant Nos. 4 to 6 failed to prove that sale-deed was executed in favour of them by the father of plaintiff and they had become lawful owner.

9. To consider the rival contentions of the parties, I have gone through the record and also perused the judgment and decree of both the Courts below.

10. After going through the judgment of both the Courts below, the Courts below after considering the oral as well as documentary evidence available on record, have specifically held that the ownership of respondent nos. 4 and 6 was not proved as regards the suit property.

11. Moreover, the learned Counsel for the appellant has failed to point out any perversity in the finding recorded by both the Courts below in that regard.

12. Once it has been held by both the Courts below, that the vendors of the defendant No.3 have failed to prove their title over the suit land, even if the

sale-deed was executed by defendant Nos. 4 to 6 in favour of the defendant No.3, will not create any title in favour of the defendant No.3 in the suit property.

13. Thus, in absence of any perversity in the findings recorded by both the Courts below, I do not find any substantial question of law involved in the present appeal. Accordingly, the appeal is dismissed.

[ANIL S. KILOR, J.]