

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

SECOND APPEAL NO. 62 OF 2016

Laxmibai Sampatrao Mahajan, dead through
legal representatives

1. Chandrashekhar S/o Sampatrao Mahajan,
aged 58, Occu. - Laborer,
2. Padma D/o Sampatrao Mahajan,
Aged Major, Occu. - Household,
3. Geeta D/o Sampatrao Mahajan,
Aged 48, Occu. - Household,
All No. 1 to 3 R/o Plot No.60,
Chandan Nagar, Nagpur. (On R.A.)
4. Lata W/o Dattatray Dhumale,
Aged 51, Occu. - Household,
R/o Dattakrupa Dhumale Niwas, Plot No. 35,
Sinchan Nagar, Near Pavan Nagar, Toroda
(Khurd), Malegaon Road, Nanded. (On R.A.)
5. Rekha W/o Purushottam Bhise,
Aged 46, Occu. - Household,
R/o Plot No.207, 3rd Lane Mahalaxmi Nagar,
Manewada Road, Nagpur. (On R.A.)

.... Appellants
(Orig. Plaintiff)

// VERSUS //

Shri Ramaji S/o Saoji Mahajan,
dead, through L.Rs.

1. Shri Raju Ramaji Mahajan,
Aged 57, Occu. - Business, R/o Plot No. 60,
Chandan Nagar, Nagpur.
2. Usha W/o Yadaoraaji Gawande,

Aged Major, Occu. Not known, R/o Plot No. 207, N.I.T. Garden, Mhalgi Nagar, Hudkeshwar Road, Nagpur.

3. Sou. Shalu W/o Vijay Bhillewar,
Aged Major, Occu. - Not Known, R/o Hudco Colony, Bhim Chowk, Jaripatka, Nagpur.
4. Sou. Prabha W/o Vinod Mehta,
Aged Major, R/o Morvi, Hanuman Sheri, Ahmadabad (Gujrat).
5. Sou. Sheela Girdhar Ambarte,
Aged Major, R/o Satnmi Nagar, Ambedkar Chowk, Plot No. 187, Central Avenue, Nagpur.
6. Sou. Meena Sunil Sawant,
Aged Major, R/o Near, NIT Garden, Uri Galli, Hudkeshwar Road, Nagpur.
7. Asha d/o Ramaji Mahajan (Before marriage)
Asha w/o. Kashinath Ire (After marriage),
Plot No. 83, Suraksha Nagar, Duttawadi, Nagpur
8. Nalu s/o Ramaji Mahajan (Before marriage)
Nalini W/o Rampukr Gupta (After marriage)
Plot No. 123, Akash Nagar, Nagpur.

... Respondents
(Orig. Defendant)

Shri M.P. Sagdeo, Advocate for the Appellants

Shri P.K. Mishra, Advocate for the respondent Nos.1 to 5

CORAM : ANIL S. KILOR, J.

DATED : 06th DECEMBER, 2021

ORAL JUDGMENT :

This appeal is arising out of the judgment and decree passed by the District Judge-9, Nagpur in Regular Civil Appeal No.332 of 2001,

dismissing the appeal and upholding the judgment and decree passed by the trial Court dated 03.05.2001 in Regular Civil Suit No.1265 of 1990, whereby the suit for ejectment and possession, was dismissed.

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

The appellants/original plaintiff filed a suit for ejectment and possession claiming thereby that she has purchased plot No.60, admeasuring 1664 sq. feet from Nagpur Improvement Trust (NIT), Nagpur and the original defendant is the brother of husband of the plaintiff, who was allowed to occupy half portion of suit plot as a licensee and on revocation of license, she claimed eviction and possession.

3. On the other hand, the defendant by filing written statement put-forth his case to the effect that the husband of the plaintiff and the defendant they had formed joint family and as their own house was acquired by the NIT, in lieu of acquisition, the suit plot was allotted, which is therefore, a joint family house and according to him, he is the co-owner of the suit plot.

4. Learned trial Court after considering the oral as well as documentary evidence dismissed the suit and has held that the plaintiff failed to prove that she is the only owner of the suit plot and also failed to prove that the defendant was a licensee. It is held that as the old house of the husband of the plaintiff and the defendant was acquired by the NIT and in lieu of that the suit plot was allotted, which is a joint family

property and the defendant is the co-sharer in the suit property, vide judgment and decree dated 03.05.2001.

5. The plaintiff feeling aggrieved by the same filed an appeal i.e. Regular Civil Appeal No.321 of 2001 before the District Judge-9 Nagpur, which came to be dismissed vide impugned judgment and decree dated 29.04.2013 by upholding and confirming the judgment and decree of the trial Court. The same is under challenge in the present appeal.

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

7. This Court on 28.02.2017 has framed the following substantial questions of law:

“1. Whether the Courts below have committed an error in holding that it was the burden of the plaintiff to establish that the suit plot was purchased with his own funds by presuming that it was a joint family property?, and

2. Whether the Courts below could have passed a decree for eviction and possession ?”

8. Shri Sagdeo, learned counsel for the appellants/original plaintiff submits that both the Courts have committed error in holding that the suit plot is the joint family property and further he submits that once the plaintiff has successfully pointed out that the suit plot stands in her name, the suit ought to have been allowed by both the Courts-below by granting the decree of eviction and possession.

9. Per contra, Shri Mishra, learned counsel for the respondents/ original defendant draws attention to the evidence led by the defendant. It is pointed out that the property is the joint family property and the suit plot was allotted by the NIT in lieu of acquisition of old house of the joint family.

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

11. Both the Courts-below, while holding the suit property as joint family property, have discussed the evidence led by the defendant and on satisfying the oral as well as documentary evidence have concurrently held that the plaintiff has failed to prove her ownership.

12. Whereas, the defendant has succeeded in proving that the suit plot is a joint family property and the defendant is the co-sharer in the suit property. No perversity has been pointed out as regards the said findings.

13. In that view of the matter, I do not find any merit in the present appeal. Accordingly, I am of the considered view that both the Courts-below have not committed any error in holding that the plaintiff has failed to prove her title and the suit plot is the joint family property. Hence, both the Courts-below have rightly denied the decree in favour of the plaintiff.

14. In that view of the matter, I have answered the substantial questions of law in above terms.

15. The appeal is **dismissed**.

16. No order as to costs.

[ANIL S. KILOR, J.]