

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

SECOND APPEAL NO. 112 OF 2022

Kamal Ambadas Junghare & ors __ Vs. __ Bhanudas Bhagawangtrao Junghare & ors
AND

SECOND APPEAL NO. 114 OF 2022

Ambadas Bhagwantrao Junghare & ors __ Vs. __ Bhanudas Bhagawangtrao Junghare & ors

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

Court's or Judge's orders

Mr. P.S.Raut, Advocate for appellants.
Mr. C.A.Babrekar, Advocate for respondents.

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/09/2022

On 19.09.2022, I had heard the appeal extensively and had recorded my findings in the order dated 19.09.2022, expressing that there was no substantial question of law involved, as under:

“1] Heard Mr. Raut, learned counsel for the appellant and Mr. Babrekar, learned counsel for the respondent.

2] The only question which is sought to be raised is that though Survey No. 3/1 was not the subject matter of the partition of the year 1975 vide Exh. 137, it was the property of late Bhagawantrao having received the same through his mother Sarubai, who had passed away in the year 1932 and in the year 1975 was orally given by Bhagawantrao to one of his sons namely Ambadas, the Defendant no.1 to the exclusion of all others.

3] Both the Courts below have concurrently held that there is nothing on record to indicate that Survey No.3/1 was given by Bhangawantrao to the Deft. no.1 Ambadas in the year 1975 and therefore have held that the plaintiff Bhanudas had a share therein, which is quantified as $1/5^{\text{th}}$.

4] In respect of the land of Survey No.12/3, it is an admitted position that the same was allotted to Bhangwantrao in the partition dated 6.9.1975 at Exh.137. It is the case of Ambadas, Defendant No.1, whose legal heirs are the Appellants that the other sons and daughters of Bhangwantrao namely Bhanudas (plaintiff), Janardhan (deceased), Ramdas (Deft.no.3) and Vimal (Defendant no.4) all had relinquished their right in Survey No. 12/3 in favour of Ambadas, Defendant no.1, in respect of which mutation entries were effected on 1.7.1988 vide mutation entry no.26. Though the Tahsildar has been examined, as DW-2 and the Talathi as DW-3, both of them state that the mutation entry was taken on the basis of relinquishment deed, claimed to have been executed by the aforesaid persons in favour of Ambadas. However, the relinquishment deed has not been brought on record. The learned trial Court by its judgment dated 7.10.13 (pg 84, para 30) has rendered a finding that the plaintiff has relinquished his right from Survey no.12/3, which finding has been reversed by the learned Appellate Court by its judgment dated 7.10.2021

5] Since the mutation entry has been effected on the basis of a document and not on the basis of any claim of oral relinquishment, it was necessary for the document which was claimed to be a relinquishment deed to be brought on record, failure to do which has resulted

in the learned Appellate Court in rendering a finding that the mutation entry cannot be relied upon to hold that the plaintiff Bhanudas has relinquished his right in the land of Survey no. 12/3. Since there is no document whatsoever, I do not see any infirmity with the judgments of the Courts below in so far as Survey no. 3/1 is concerned and that of the Appellate Court in so far as Survey no.12/3 is concerned. According to me, no substantial question of law arises.

6] Mr. Raut, learned counsel for the appellant at this stage seeks an adjournment of a week to find out whether there is a document available.

7] Only for that purpose, list the matter on **26.9.2022.”**

The matter was adjourned for today only for the reason for the learned counsel for the appellants to enquire whether there was any document evidencing any relinquishment of his share by the plaintiff. Mr. Raut, learned counsel for the appellants today makes a statement that there is no document available indicating any relinquishment by the plaintiff Bhanudas of his right in the land of Survey No. 12/3, in light of which, I do not find any substantial question of law being made out in the present appeals. The appeals are therefore dismissed. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:28.09.2022 10:48