

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

SECOND APPEAL NO. 84 OF 2022

Umesh Shamrao Lokhande

..VS..

Smt. Suman Babanrao Gulhane and ors.

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

Court's or Judge's orders

Shri Anand Deshpande, Advocate for the appellant.

CORAM : MANISH PITALE, J.

DATED : 23/03/2022.

By this appeal, the appellant (original plaintiff) has challenged concurrent judgments and orders passed by the two Courts below.

2. The appellant had filed the suit for declaration and permanent injunction against the defendants who are his relatives. It was the case of the appellant that, after the death of Savitribai Govinda Lokhande, there were seven legal heirs, who have allegedly orally entered into a mutual understanding that the appellant or his brother Ganesh Lokhande would cultivate the suit land and enjoy the benefits.

3. According to the appellant, his brother Ganesh Shamrao Lokhande cultivated the suit land and thereafter, he executed a relinquishment Deed in favour of the appellant. This is the basis of the claim raised by the appellant as regards the ownership and possession of the suit property.

4. On the basis of such pleadings, relying solely on oral mutual understanding, the appellant approached to the Trial Court. The defendants failed to file their written statement. The appellant led evidence in terms of the

pleadings on his behalf.

5. The Trial Court took into consideration the material on the record and found that neither the appellant nor his brother produced any document to show their right of ownership in the suit property. The Trial Court found that even if, the material placed on the record on behalf of the appellant, in terms of his pleadings, was to be taken into consideration, at the most, his brother was only cultivating the land in terms of the alleged oral mutual understanding. There was nothing to show that the legal heirs of the deceased Savitribai Lokhande had relinquished their rights in the suit property in favour of the brother of the appellant. In fact, it was found that 7/12 extracts, as well as mutation entries, showed the defendants as co-sharers. On this basis, the suit was dismissed.

6. The Appellate Court also reached conclusions against the appellant and being in agreement with the findings rendered by the Trial Court. Although, Mr. Deshpande sought to argue that since the defendants had failed to file their written statements and there was no denial of the claims of the appellant, the suit ought to have been decreed, this Court is of the opinion that the plaintiff has to stand on his own legs. In the present case, the appellant/original plaintiff miserably failed to prove with cogent evidence and material, any iota of right in the suit property. Therefore, the concurrent findings rendered by the Courts below, do not deserves any interference. No substantial question of law arises in the present case. Accordingly, the appeal is dismissed.