

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
SECOND APPEAL NO. 169 OF 2020**

Rajendra Rambhau Kaware and anr.

Vs.

Pandurang Annaji Patil (Dalavi), (dead) Thru. LRs

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.I. Dipwani, Advocate for appellants.
Ms. Ira P. Khisti, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 31.03.2022.

By this appeal, the appellants (original objectors) have challenged concurrent orders passed by two Courts below, whereby their objection as regards execution of decree has been rejected.

2. In the present case, the respondents (original plaintiffs) had filed suit for declaration and possession. Although initially the suit was dismissed, the appellate Court allowed the appeal and granted decree in favour of the respondents. The said decree stood confirmed by dismissal of Second Appeal by this Court on 05.07.2016. Admittedly, there was no further challenge raised against the order of this Court and hence, the decree attained finality.

3. As per the decree passed in favour of the respondents, Sale-Deed executed in favour of elder brother of the appellants was set aside. The only basis on which the appellants raised objection in the execution proceedings was that their elder brother i.e. one Chandrakant had executed a Gift-Deed dated 30.01.2016 in their favour. This Gift-Deed was executed on the strength of Sale-Deed dated 15.03.1999, which was executed in favour of the said Chandrakant. It is undisputed that this very Sale-Deed stood set aside by the decree passed in favour of the respondents, which has admittedly attained finality. Taking note of such facts, the executing Court passed its order on 27.06.2019 rejecting the objections raised by the appellants.

4. Aggrieved by the same, the appellants filed appeal before the District Court. In the District Court, the appellants claimed that even if the Sale-Deed executed in favour the said Chandrakant was set aside and the Gift-Deed was executed subsequently, they were claiming as tenants through their grandmother. It was claimed that their grandmother was in possession of the suit property as a tenant and that therefore, they were entitled to object to execution of the decree passed in favour of the respondents.

5. The appellate Court considered the aforesaid grounds raised on behalf of the appellants. It was noted that the appellants were blowing hot and cold at the same time. On the one hand they came with the case that they were in possession of the suit property, in pursuance of the Gift-Deed dated 30.01.2016 and on the other hand, they were claiming status of tenants through their grandmother. The appellate Court noted that the Gift-Deed dated 30.01.2016, did not refer to the alleged tenancy at all. It is an admitted position that the Sale-Deed on the basis of which the said Chandrakant purportedly executed the Gift-Deed dated 30.01.2016, itself stood set aside by decree passed in favour of the respondents, which has admittedly attained finality.

6. It is the significant that the appellate Court after taking into consideration the oral evidence on record found that the appellant No.1 in cross-examination had admitted that he was residing with his father in some other property. These facts that emerge from the material on record clearly indicate that the appellants have made desperate attempts to somehow frustrate the decree passed in favour of the respondents, which admittedly attained finality as far back as on 05.07.2016, with dismissal of the second appeal by this Court.

7. In view of the aforesaid facts, it is clear that no substantial question of law were arises in the present second appeal.

8. Accordingly, the appeal is dismissed with no order as to costs.

JUDGE

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