

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5994 OF 2017

Pankaj Digambar Chandgude ... Petitioner

Versus

Smt. Parvati Baban Nivangune and others ... Respondents

WITH

WRIT PETITION NO. 6902 OF 2017

Laximi Pankaj Chandgude ... Petitioner

Versus

Smt. Parvati Baban Nivangune and others ... Respondents

.....

Mr. Rahul Kadam for the Petitioners.

Mr. Rajesh More for Respondent Nos.1 to 5.

.....

CORAM : N.R. BORKAR, J.

DATED : 6 JUNE 2023

P.C. :-

. The respondents herein had filed the Special Civil Suit Nos.21 of 2006 and 22 of 2006 against the petitioners herein for declaration and possession. The Special Civil Suit No.21 of 2006 was filed challenging the sale deed dated 13 April 2005 in respect of land bearing Block No.148/10 of Village Pargaon, Taluka Daund, District Pune in favour of the petitioner in Writ Petition No.6902 of 2017 and the Special Civil Suit No.22 of 2006 was filed challenging the sale deed of the same date in respect of land bearing Block No.147/10 in favour of Petitioner in

Writ Petition No.5994 of 2017, who is the husband of the petitioner in Writ Petition No.6902 of 2017.

2. It is not in dispute that the husband of Respondent No.1, namely, Baban Rama Nivagune was the owner of the lands in question. According to the respondent No.1, her husband – Baban Nivangune is missing since the year 1995 and therefore there was no question of executing sale-deeds in question by him in favour of the petitioners on 13 April 2005. The trial court had dismissed both the suits by Judgment and decree dated 31 January 2008.

3. The respondents in the appeals filed by them against the Judgment and Decree of the trial court sought permission by moving an application under Order 41 Rule 27 of the C.P.C. to produce additional evidence. The appellate court has allowed the said application by the order impugned and permitted the respondents to examine one Baban Ramchandra Jadhav.

4. I have heard the learned Counsel for the Petitioners and the learned Counsel for the contesting respondents.

5. The respondents in their application under Order 41 Rule 27 of the C.P.C. stated thus :

“That the Applicant say and submits that the Applicant tried to search the person who stand as Baban Rama Nivangune but all the efforts are in vain. Thereafter the applicant continued the search of the person and on 13/5/2009 published notice

in the newspaper “Prabhat” calling where about of the person with his photograph. The applicant says and submit that response to her public notice a person namely Baban Ramchandra Jadhav residence of Ganesh Nagar, Kamble Vasti, Dhari, Pune came forward and thereby given necessary information about the execution of the sale deed.”

6. It is well settled that in absence of satisfactory reasons for the non-production of the evidence in the trial Court additional evidence should not be admitted in appeal as party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give additional evidence under Order 41 Rule 27 of the C.P.C. It is also well settled that a party on whom the onus of proving certain issue lies fails to discharge the onus, is not entitled to a fresh opportunity to produce evidence as the court in such a case pronounce Judgment against him and does not require any additional evidence to enable him to pronounce Judgment. In the present case, in absence of any satisfactory reason as to why the exercise of publishing notice in newspaper was not done during the pendency of suit, the appellate court was not justified in allowing the application. The order impugned is thus set aside. The Petitions are allowed.

(N.R. BORKAR, J.)

KANCHAN
PRASHANT
DHURI

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by KANCHAN
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