

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

SECOND APPEAL No. 241/2009

1. Ramdas s/o Maikulal Gupta
(Deceased, through LRs)
 1. Shakuntala w/o Ramdas Gupta,
aged 77 years.
 2. Surendrakumar s/o Ramdas Gupta,
aged 51 years.
 3. Jitendrakumar s/o Ramdas Gupta,
aged 54 years.
r/o Timki, Nagpur.
 4. Smt. Surekha Rameshchandra Gupta,
aged 56 years,
r/o Ramdas Gupta Niwas,
In front of Telephone Exchange Office,
In the side of Gupta Nursing Home,
Sadar Bazar, Hoshangabad.
 5. Smt. Vandana Vishmohan Gupta,
Occ. Advocate, Aged 45 years,
r/o Station Road, Solgaon Tada,
Solagram, Dist. Hoshangabad (MP)
2. Narendra s/o Ramdas Gupta,
aged 43 years, Occ. Business.
Both r/o Bholenath Bhawan, Diwanshah
Takiya Raod, Timber Bazar, Nagpur.

Org. Defdt. No.2 on R.A.

.....APPELLANTS

...V E R S U S...

Harishchandra Maikulal Gupta,
(Deceased through LRs.)

1. Sau. Pushpa Laxminarayan Gupta,
aged about 60 years, Occ. Housewife.

r/o c/o Vivek Laxminarayan Rupwal,
(Gupta), 230, 27 Shanti Niketan,
In front of Big Bazar ITP, Whitefield Road,
Bangalore – 560048 (Karnataka)

2. Sau. Saroj Surajprasad Gupta,
aged 62 yeas.

Both r/o At Vignaharta Apartment,
Dhantoli, 7th Floor Nagpur.

3. Ravi Harishchandra Gupta,
aged 55 years, Occ. Business,
r/o At Plot No.102, Kamal Palace,
Ramdaspath, Central Bazar Road,
Nagpur.

4. Deepak Harishchandra Gupta,
aged 50 years, Occ. Business,
r/o At Vrindawan Apartment,
Karodpati Galli, Civil Lines,
Nagpur.

5. Chandrakumar Harishchandra Gupta
(Deceased through LRS.)

- 5A. Madhuri w/o Chandrakumar Gupta,
aged 65 years, Occ. Household.

- 5B. Sulabh s/o Chandrakumar Gupta,
aged 40 years, Occ. Business.

- 5C. Saurabh s/o Chandrakumar Gupta,
aged 47 years, Occ. Business.

- 5D. Chama w/o Suresh Gupta,
(Daughter of Chandrakumar Gupta)
aged adult.

All r/o Plot No. 1403, Chandrakuti,
Deshpande Layout, Bhandara Road,
Nagpur.

6. Ratna Ashok Gupta,
Aged 58 yeas, Occ. Housewife,
r/o At C/o Yogesh Gupta, B-603, Atlantis
Apartment, Kasar Vadwali, Near Hyper
City Mall, Ghodbandar Road, Thane.
7. Sau. Papi Rajesh Gupta,
aged 42 yeas, Occ. Nil, r/o SBI Colony,
Vijay Nagar, Bhopal (MP)
8. Meena Ashok Gupta,
Aged 35 years, Occ. Housewife,
r/o Plot no. 12, Yashwant Nagar,
Ambazari Road, Opposite Engineering
College Gate, Nagpur. **...RESPONDENTS**

Mr. S. P. Palshikar, Advocate for appellants.

Mr. S. Kher, Advocate Instructed By Mr. Masood Shareef Advocate
for respondents.

CORAM:- ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON :- 13.07.2023

JUDGMENT PRONOUNCED ON : 21.07.2023

JUDGMENT

Heard.

2. The appellants/original defendants (hereinafter referred to as the “defendants”) have filed present appeal under Section 100 of the Civil Procedure Code, 1908 (for short “CPC”) against the respondent – original plaintiff through his legal representatives (hereinafter collectively referred to as “Plaintiff”), being aggrieved by the judgment and decree dated 02.03.2009, passed by learned District Judge-8, Nagpur in Regular Civil Suit No.38/2005, whereby it has confirmed the judgment and decree dated 30.11.2004 passed by the learned 6th Jt. Civil Judge Junior

Division, Nagpur in Regular Civil Suit No. 1091/2002. The appeal has been admitted on the following substantial questions of law.

“i) Whether the Courts below have arrived at a perverse finding of fact with regard to title of the suit property of the appellants by non-considering the document at Exh.84 which is a sale deed dated 29/5/1951 though it is a registered document?

ii) Whether the Courts below were justified in not considering the said document at Exh.84 merely because of attesting witnesses were not examined though the said document was duly registered under the Indian Registration Act?”

3. The relevant facts are as under:

The plaintiff is elder brother of defendant No.1. The defendant No.2 is son of defendant No.1. The plaintiff filed a suit for perpetual injunction, restraining the defendants from creating any hurdle, impediment, obstacle, obstruction or hindrance in the peaceful possession and enjoyment of the suit house in any manner. The plaintiff averred that he is lawful owner and is in legal occupation and possession of the suit house bearing Municipal Corporation House No.180/49, City Survey No.454, sheet No. 138 of mouja Nagpur. The suit house is a three storey building. The plaintiff has let out ground floor of suit house to one

Ratanchand Fulchand Vaishya. The upper two floors were lying vacant and were locked. The defendants on 06.07.2002, made an attempt to enter into house and thereby tried to commit criminal trespass by breaking open the lock. The plaintiff lodged report with police station. The defendants have been threatening the plaintiff everyday to hand them over the half portion of the suit house. Therefore, the suit.

4. The defendants have resisted the plaintiff's claim by filing written statement. According to them, the plot No.47-A (City Survey No. 454), admeasuring 454 Sq. Ft. was purchased by father of plaintiff and defendant No.1 vide registered sale deed 18.07.1930. After the death of father, the plaintiff and defendant No.1 being the legal heirs became the owners of the said plot. In the year 1951, the plaintiff and defendant No.1 have jointly purchased adjoining property bearing plot No.47, city survey No.455. The plaintiff and defendant No.1 demolished the previous structure and constructed a new building in the year 1957. Both the plaintiff and defendant No.1 were residing therein and had joint business which continued till 1962. Thereafter, because of expansion of family, there occurred scarcity of the space and therefore the plaintiff asked defendant No.1 to shift his family to

any other house. The plaintiff being elder brother, defendant No.1 shifted his family in the adjoining area. The plots bearing Nos. 47 and 47A continued to be undivided and were under joint ownership of plaintiff and defendant No.1. Thereafter, the plaintiff constructed the bungalow at Vardhaman Nagar and shifted his family. Thus, according to defendant No.1, he being joint owner, has every right and interest in the suit property. Accordingly, prayed for dismissal of the suit.

5. The trial Court, after having considered the rival claims, has framed following issues and answered the same in the following manner.

	ISSUES	FINDINGS
1	Whether plaintiff proves his possession over the suit property?	Affirmative
2.	Whether plaintiff has further proved that defendants have obstructed his peaceful possession over the suit property?	Affirmative
3.	Whether defendant No.1 has proved that plaintiff and defendants have jointly purchased Plot No.47 vide sale deed dt.29/05/1951?	Negative
4.	Whether plaintiff is entitled for injunction as claimed?	Affirmative
5.	What order?	As per final order

6. The defendants preferred first appeal before the District Judge-8 Nagpur being Regular Civil Appeal No. 38/2005. The first appellate Court, in view of the rival submissions, framed following points and rendered its findings as under:

	Points	Findings
1	Whether respondent/original plaintiff proves his possession over the suit house?	In the affirmative
2	Whether respondent/original plaintiff proves that defendants have obstructed his peaceful possession over the suit house?	- do -
3.	Whether appellants/original defendants prove that plaintiff and defendants have jointly purchased plot No.47 under registered sale-deed dated 29-05-1951?	In the negative
4.	Whether appellants/original defendants prove that plaintiff and defendant No.1 demolished structure and then constructed two storied building on plot No.47 and 47-A?	As per final order

In the light of the aforesaid concurrent findings against the defendants, the substantial questions of law as formulated, are to be considered.

7. Both the Courts below have held that the defendants could not prove by documentary or oral evidence that the suit property was jointly purchased by the plaintiff and defendant No.1. The first appellate court has also noted that in the evidence

of DW1 Ramdas, it has come on record that his grandfather Maykulal Gupta had five sons viz. plaintiff, defendant No.1, Kalicharan, Shivacharan and Dashrath. The plaintiff has instituted suit only against defendant No.1 and not against other brothers. The other three brothers have not challenged the status of the property. The first appellate court, therefore, was of the view that such a status would indicate that the suit house was not joint family property. The first appellate court has also, on the basis of the evidence of PW1 Deepak, along with documents placed on record has held that the plaintiff was in possession of the suit property. Both the Courts below have rendered concurrent findings in respect of the ownership of the plaintiff so also his possession. The said finding is now challenged only on the ground that the courts below have not considered sale deed Exh.-84.

8. I have gone through the judgment and decree passed by learned trial Court. The Court has duly considered the sale deed Exh.-84 in the light of the pleadings made by the defendant No.1 in written statement. The plaintiff and defendant No.1 are shown as purchasers. It appears that the original sale deed was not produced. The certified copy of the sale deed was produced. DW2 – Yogini, the official of the office of Sub Registrar, was examined

to prove certified copy of the sale deed. She deposed that the sale deed was in respect of house No.449, circle No.11/23. Learned counsel for the plaintiff raised objections on the ground that the certified copy of the sale deed is secondary evidence and the defendant has not even made a case to lead secondary evidence. The trial Court, through found substance in the objection so raised by the plaintiff has considered the effect of the sale deed Exh.-84.

9. The sale deed was, admittedly, in respect of survey No.17/23, house No. 449. The defendants' case, however, is that the plaintiff and defendant No.1 purchased the property bearing city survey No.455. The trial Court has opined that the defendant failed to prove that the property bearing survey No. 455 was having old survey No. 449. The defendants' case was that plot No. 47 was jointly purchased by the plaintiff and defendant No.1. No evidence is brought on record by the defendants to establish that the plot No. 47 is now bearing new City Survey No. 455. Accordingly, the trial Court disbelieved the theory put forth by the defendant No.1 that he and plaintiff have purchased the suit property. The said finding, in my view, is in tune with the evidence led before the trial Court and that, therefore, no interference is called for by this Court.

10. Even otherwise, the substantial question of law as formulated would indicate that an impression was created that the Courts below have not considered the said document merely because the attesting witness has not been examined. This ground as is raised in the present appeal, is contrary to what the trial Court has taken into consideration. The sale deed Exh.-84 dated 29.05.1951, has been duly considered by the trial Court as stated above and has given sound reasoning to opine that the defendants failed to prove that the property in the sale deed and the suit property is one and the same.

11. In the light of the above, both the substantial questions of law are answered in the negative meaning thereby that there is absolutely no substance in the present appeal. The appeal, therefore, is dismissed. No order as to costs.

(Anil L. Pansare, J.)

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