

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

Second Appeal No. 417 of 2019

Shri Govindrao Balkrushna Shelke

Vs.

Shri Balkrushna Ganeshrao Shelke and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N.G. Jetha, counsel for the appellant.

Mr. P.V.Rajurkar, counsel for respondent No.1 (a)

Mr. V.D.Muley, counsel for the respondent No.1 (b) to 1 (d).

CORAM : ANIL S. KILOR, J.
DATED : 20.01.2023.

Heard.

2. In the present second appeal, the concurrent findings recorded by both the Courts below against the plaintiff/appellant while dismissing the suit for declaration and perpetual injunction vide judgment and decree dated 02/05/2015 passed by the 2nd Joint Civil Judge, Junior Division, Warud, District Amravati and vide judgment and decree dated 12/04/2019 passed by the *Ad hoc* District Judge-2, Amravati in Regular Civil Appeal No.84 of 2015, are under challenge.

3. The declaration sought by the plaintiff/appellant was in respect of ownership of the suit property and perpetual injunction by restraining the defendants to interfere with the possession of the plaintiff/appellant, over the suit property.

4. I have heard the learned counsel for the respective parties.

5. This Court, on 25/09/2019 framed the following substantial questions of law.

“(i) Whether the Courts below appreciated pleading and the prayer made on behalf of the appellant (original plaintiff) as regards the ancestral nature of the property and the claim that the respondent No.1 (defendant No.1) had no authority to alienate the same were appreciated in the correct perspective by the Courts below, while framing issues and points for determination?”

“(ii) Whether the respondent No.1 had authority to alienate the suit property in favour of the respondent No.3, in view of the fact that the appellant specifically claimed that suit property was indeed an ancestral property?”

6. In this case, admittedly the suit property is an ancestral property inherited by the father of the plaintiff from his ancestors and vide sale deed dated

21/08/2007 the suit property was sold out to defendant No.3. It is indisputable that the suit property is not the entire property, which the plaintiff inherited. Thus, it is clear that the suit property as a whole, was the property, which came to the share of the father of the plaintiff in oral partition and the father of the plaintiff has every right to sell the suit property to the extent of his share, in favour of defendant No.3. Accordingly, both the Courts below have held in favour of defendant No.3 and against the plaintiff/appellant.

7. As far as the gift deed is concerned, through which the plaintiff/appellant is claiming title over the suit property and further claiming that the gift deed was executed on 21/09/1994, i.e. prior to execution of sale deed Exhibit-15 dated 21/08/2007 in favour of defendant No.3, it is an admitted fact that the gift deed is not a registered document and as per section 17 of the Registration Act, it is mandatory to register the said document and in that view of the matter, both the Courts below discarded the gift deed and denied the decree to the plaintiff/appellant to the effect that the appellant is the owner of the suit property.

8. Both the Courts below further did not find favour with the case of the plaintiff/appellant that he is

in possession of the suit property and accordingly, the prayer of the appellant/plaintiff for perpetual injunction was also denied.

9. In the circumstances, since the respondent/defendant No.1, i.e. the father of the plaintiff has not alienated the entire ancestral property, but the land to the extent of his share only, in favour of defendant No.3, I answer both the substantial questions of law in negative and held that in the facts and circumstances, defendant No.1 had every right and authority to alienate the suit property in favour of defendant No.3.

10. In view of the above, the second appeal is dismissed. No order as to costs.

[ANIL S. KILOR, J.]