



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

SECOND APPEAL No.59 OF 2024

(Jijabai wd/o. Pilaji Karwade and others Vs. Anandabai Shrihari Karwade and others)

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

Court's or Judge's orders.

Mr. Mahesh V. Rai, Advocate for the appellants.

CORAM : G.A. SANAP, J.
DATE : 14th MARCH, 2024.

1. Heard at the stage of admission. Perused the record and proceedings.
2. In this second appeal challenge is to the judgment and decree dated 30th November, 2023, passed by the District Judge-9, Nagpur whereby the appeal filed by the present appellants against the judgment and decree of dismissal of the suit filed by them came to be dismissed.
3. The appellants are the original plaintiffs. The disputed property is Plot No.200, bearing Kh.No.6, situated at Ward No.53, mouza Bhankheda within the limits of Nagpur Improvement Trust and Nagpur Municipal Corporation, admeasuring 1500 sq.ft. According to the appellants, their predecessor-in-title Pilaji and predecessor-in-title of respondents by name Shrihari were the joint owners of the Plot No.200. The lease of the Plot was executed in the name of Shrihari.

The appellants and the respondents have equal share in the Plot. Pilaji during his lifetime made a construction of three rooms on one side of the Plot. According to them, in the year 1972 oral partition took place between Pilaji and Shrihari. In the partition, half portion was given to Pilaji and half portion was given to Shrihari. The appellants continued to possess half portion of the land. According to them, Shrihari during his lifetime as well as the respondents, after the death of Shrihari, tried to dispossess them on the part of the Plot, on the ground that Shrihari was the absolute owner of the Plot. They filed the suit for declaration of their right in the property as well as for permanent injunction.

4. The suit was resisted by the respondents. According to them, the case of oral partition put forth by appellants is false and frivolous. Shrihari was the absolute owner of the property. Shrihari during his lifetime bequeathed the Plot in favour of his four sons, namely, respondent Nos.2 to 5.

5. The parties adduced evidence before the trial Court. The learned Judge of the trial Court on appreciation of the evidence held that Shrihari was the absolute owner of the property. Learned Judge has held that the appellants have failed to prove that they have become the owner of the suit property as per the oral partition. The Partition Deed, Exhibit-47, which was executed in the year 2006 has been disbelieved. The Appellate Court on re-appreciation of the evidence

recorded its agreement with judgment and decree passed by the trial Court and dismissed the appeal.

6. I have gone through the record and proceedings with the assistance of the learned Advocate for the appellants. It is to be noted that the Courts below have recorded a concurrent finding of fact that appellants have failed to prove that they are the absolute owners of the half portion of the Plot by virtue of oral partition. The Courts below have held that Shrihari was the absolute owner of the property and the Will Deed of the said property executed by Shrihari in favour of respondent Nos.2 to 5 was legal and valid document. The Courts below have disbelieved the Partition Deed of 2006 Exhibit-47.

7. At this stage, it is pertinent to mention that in the plaint a reference has been made to the agricultural lands. It is stated that the common ancestor Vithoba owned nearabout 17 to 19 acres of agricultural land. The appellants are silent about the division of the agricultural land. In my view, this is the crux of the dispute. The Courts below have concurrently held that Shrihari was the absolute owner of the property.

8. On going through the record it is evident that Courts below have not committed any mistake or perversity. The evidence has been properly considered and appreciated. As such, I conclude that no substantial question of law arises in this second appeal.

9. The appeal, therefore, deserves to be dismissed. It is accordingly dismissed.

(G.A. SANAP, J.)

Wadode