



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

SECOND APPEAL NO.34 OF 2020

Shrikant Pandurang Bagde and others

Vs.

Yashodha Janba Somkuwar (died) through LRs Shivshankar Janba
Somkuwar and others

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

Court's or Judge's orders.

Shri R.J. Kankale, Advocate for appellants.
Shri Shankar Borkute, Advocate for respondent nos.1-a,1-b,2 &
4.

CORAM : M.W. CHANDWANI, J.

DATE : 01.04.2025.

1. Heard the learned counsel for the appellants as well as the learned counsel for the respondents.

2. The appellants filed a suit before the learned trial Court for declaration and permanent injunction that the decree obtained by respondent no.1 in R.C.S. No.109/1988 was by playing fraud and therefore, sought setting aside of the decree. Respondent no.1 had filed a suit bearing RCS No.109/1988 for declaration, partition and separate possession wherein the appellants were served the summons. The appellants did not participate in the suit which came to be decreed and two properties were directed to be partitioned by allowing 1/3rd share of respondent no.1; however, one property namely, agricultural land bearing Survey No.153 was held to be the property of

respondent no.1 as owner by survivorship. The appellants filed an appeal alongwith application for condonation of delay in filing the appeal. The appellate Court not being satisfied with the reasons for condonation of delay, dismissed the application by order dated 05.04.1994. An unsuccessful attempt was made before this Court by filing Civil Revision Application No.607/1991 and ultimately, the decree passed by the learned trial Court in R.C.S. No.109/1988 (New RCS No.125/1989) became final.

3. Now, the appellants by filing suit for declaration contended that the decree has been obtained by respondent no.1 by playing fraud which came to be dismissed not only by the trial Court but also by the first appellate Court concurring with the finding of the trial Court. The premise for filing the suit was that the appellants were not summoned, which has been categorically dealt with by the trial Court as well as the first appellate Court in detail by holding that summons were served to the appellants and inspite of that, they failed to appear before the trial Court. It is also to be noted that, before filing of the suit, execution proceeding were objected upon by the appellants and ultimately, respondent no.1 succeeded in taking possession of the suit property from the appellants.

4. There are two concurrent findings of the trial Court as well as the first appellate Court dispelling the contention of the appellants that the decree in earlier suit was obtained

by playing fraud. That apart, it appears that the judgment and decree passed by the trial Court in earlier suit i.e. RCS No.109/1988 became final after the first appeal and the civil revision application filed by the appellants were dismissed.

5. In view of this, I do not find any substantial questions of law arising in this appeal. Hence, the appeal is dismissed.

JUDGE

Wagh