

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

SECOND APPEAL NO.94/2023

Madhukar Shivram Desai

...Versus...

Ashok Mahadev Desai (Dead) through L.Rs. Gitabai Ashok Desai and others

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

Court's or Judge's orders

Mr. R.G. Kavimandan, Advocate for appellant
Mr. S.K. Thengri, Advocate for respondent Nos.1 (A, B, D), 3 & 4

CORAM : ROHIT W. JOSHI, J.

DATE : 01/10/2025

1. The appellant is the original plaintiff. He has filed a suit for declaration of ownership and possession and injunction restraining the defendants from disturbing his possession over the suit property. The suit property is purchased under a sale-deed dated 06/07/1951. The names of the purchasers in the sale-deed are that of the plaintiff and his sister Vithabai. It is undisputed that at the time of execution of sale-deed the plaintiff was merely 7 to 10 years old. The defendants are the children of real brother of plaintiff and Vithabai. Vithabai has executed a Will dated 17/09/1998 in favour of the plaintiff. It is undisputed that Vithabai has died issueless.

2. Learned trial Court has held that Will is duly proved. However, the learned first Appellate Court has held that the plaintiff failed to clear suspicious circumstances around the Will and therefore Will is not reliable.

3. Be that as it may, both the Courts have concurrently found that the plaintiff, who was a minor as on the date of sale-deed, obviously would not have any source of income. The Courts have held that the property although purchased in the name of plaintiff and Vithabai, there was a reference to this property in the partition-deed and declaration executed between the family members. These documents indicate right and interest of the defendants over the suit property. Vithabai was not a party to the said document. However, it is not in dispute that the plaintiff is party to the said document. These documents are proved during the course of trial and are found to be reliable by both the learned Courts. The learned first Appellate Court has also held that although plaintiff admitted his signature on the said documents, the plaint was completely silent with respect to these documents and that the same were not questioned by the plaintiff.

4. The learned Court has therefore held that the plaintiff was not entitled to declaration of exclusive ownership over the suit property. The suit for perpetual injunction is also dismissed, in view of the findings that the plaintiff and defendants were in joint possession. The findings recorded are pure findings of facts arrived at on appreciation of evidence. In that view of the matter, no substantial question of law is made out. The second appeal stands dismissed. No order as to costs.

(ROHIT W. JOSHI, J.)