



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

SECOND APPEAL NO.328/2024

Sushma w/o Ashok Dewade
...Versus...
Vimalbai Dadaji Thakare and others

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

Court's or Judge's orders

Mrs. Sunita Paul, Advocate (appointed) for appellant

CORAM : ROHIT W. JOSHI, J.
DATE : 29/09/2025

1. The suit property, which is an agricultural land bearing Survey No.51/1 admeasuring 3.61 HR situated at village Borgaon, Tah. Hinganghat, District Wardha was subject matter of suit for specific performance of contract filed by one Vithal Mahadeo Kolhe (predecessor of the respondents) against one Trivenibai Dewade (mother-in-law of present appellant/plaintiff). The said suit was decreed on 17/06/2006.

2. The learned Court has passed decree for specific performance of contract and delivery of possession in favour of said Vitthal Kolhe. Trivenibai, the mother-in-law of plaintiff/appellant filed appeal challenging the said decree for specific performance of contract, which was also dismissed and the decree accordingly attained finality. Said Vitthal Kolhe thereafter filed execution proceedings bearing Special Darkhast No.17/2007 which was renumbered as Regular Darkhast No.9/2012. The learned Executing Court passed order dated 09/10/2013 directing Triveni to execute the sale-

deed in favour of Vitthal Kolhe, the decree holder. The sale-deed was executed on 13/03/2014 and said Vitthal Kolhe was placed in possession of the suit property in execution of the decree.

3. The present appellant/plaintiff claimed ownership over the suit property on the basis of Gift deed dated 18/01/2013 executed in her favour by her mother-in-law Trivenibai, who is judgment debtor in the aforesaid suit for specific performance of contract. The appellant/plaintiff also claims to be in possession of the suit property. She has filed a suit against the respondents, who are descendants of Vitthal Kolhe (decree holder in suit for specific performance of contract), seeking declaration of ownership, perpetual injunction against the forcible dispossession and also for cancellation of the sale-deed executed in favour of Vitthal Kolhe.

4. Both the learned Courts have dismissed the suit and the appeal preferred by the present appellant. The learned Courts had taken into consideration the fact that the mother-in-law of the plaintiff had entered into agreement of sale with Vitthal Kolhe and the said suit was decree long before the date of alleged Gift deed in favour of appellant/plaintiff. It is also found that the decree duly executed and the decree holder was also placed in possession of the suit property.

5. The contention raised by the learned Advocate for the appellant is that the Gift deed in her favour is dated 18/01/2013 and the sale-deed executed in favour of Vitthal Kolhe is dated 13/03/2014 and therefore the Gift must prevail over the sale-deed.

6. The contention is fallacious and is liable to be rejected. The decree for specific performance will relate back to the date of agreement. In any case the suit was decreed on 17/06/2006 and the Gift is executed after the decree for specific performance was passed on 18/01/2013, the mother-in-law of appellant/plaintiff had no right to transfer the property in favour of the appellant/plaintiff by virtue of the Gift deed in question.

7. The second appeal, therefore, stands dismissed since it does not disclose any substantial question of law. No order as to costs.

8. Fees of the learned Advocate appointed for the appellant be paid in accordance with the Schedule.

(ROHIT W. JOSHI, J.)