



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

SECOND APPEAL NO. 30/2025.

Gulab @ Bitty Bisanji Bhure,
Aged 70 years, Occupation Nil,
Resident of Nandora, Tahsil and
District Bhandara, through his
Constituted Power of Attorney
Vishwakant Gulab Bhure,
Aged 37 years, Occupation – Labour,
resident of Nandora, Tahsil and
District Bhandara.

.....

APPELLANT.
Ori. Defendant.

VERSUS

Rekha Ramesh Mehar,
Aged 61 years, Occupation – Nil,
Resident of Ganeshpur, Tahsil
and District Bhandara.

.....

RESPONDENT.
Ori. Plaintiff.

Shri A.A. Dhawas, Advocate for the Appellant.
Shri V.R. Thote, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : MAY 02, 2025.

ORAL JUDGMENT.

The appellant in this present appeal is the original

defendant who has challenged the concurrent decrees for possession of suit properties passed against him by way of present appeal. It is undisputed that the appellant had earlier filed a suit, being Regular Civil Suit No.32/2010 challenging the sale-deed with respect to the suit property executed in favour of the plaintiff. The said suit came to be dismissed. The appeal preferred by the defendant against dismissal of the said suit also came to be dismissed. The ownership of the plaintiff was thus proved in the earlier round of litigation between the parties. However, it was held that the plaintiff in the said suit i.e. appellant herein was in possession of the suit property, and therefore, a decree was passed against the present respondent/plaintiff that she should not take possession of the suit property from the appellant/defendant without following due process of law.

2. In this backdrop, the present respondent/plaintiff filed suit for possession being Regular Civil Suit No.207/2018. The learned Trial Court has partly decreed the suit vide its judgment and decree dated 13.10.2021, holding that the plaintiff had proved ownership over the suit property. For the same reason, the appeal preferred by the defendant also came to be dismissed. In present Second Appeal, the defendant has raised a contention that the suit for

possession filed by the plaintiff was premature, because the substantive appeal against the decree challenging the sale deed which was filed by the present defendant, was pending on the date on which the suit was filed and this fact was suppressed before the trial Court. This submission is liable to be rejected. The pendency of appeal challenging the title cannot operate as a bar for filing suit for possession. It is undisputed that the appeal was dismissed subsequently.

3. As regards suppression of facts with respect to pendency of appeal, the appeal was filed by the defendant. The defendant was party to the suit against whom a decree for possession was sought. The defendant was obviously aware about pendency of the appeal filed by her, and as such question of suppression does not arise. In that view of the matter, no substantial question of law arises for consideration in this appeal, the same is therefore, dismissed, with no order as to costs.

JUDGE