

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

SECOND APPEAL NO.165/2024

Madhuri Sunilrao Vaidhya and another
...Versus...
Meerabai Kashinath Vaidhya

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

Court's or Judge's orders

Mr. A.M. Sudame and Mr. I.A. Fidvi Advocates for appellants
Mr. D.R. Bhoyar and Mr. R.R. Dhawad, Advocates for respondent

CORAM : ROHIT W. JOSHI, J.
DATE : 11/02/2026

1. The present appeal is filed by the appellants-original defendants against the judgment and decree dated 24/11/2022, passed by the learned Ad hoc District Judge-2, Wardha in Regular Civil Appeal No.137/2018, whereby the learned first Appellate Court has dismissed the appeal by confirming the judgment and decree dated 16/10/2028, passed by the Joint Civil Judge, Junior Division, Wardha in Regular Civil Suit No.56/2014.

2. Undisputedly, the sale-deed of the suit property is in the name of plaintiff. The defendant Nos.1 and 2 are widow and son of predeceased son of plaintiff. The plaintiff has filed a suit for declaration and possession against the defendants. The learned Trial Court has decreed the suit in favour of the plaintiff. The appeal preferred by the defendants is also dismissed.

3. Learned Advocate for the appellants contends that property was allotted to the share of husband of defendant

No.1 in a family partition, which was orally arrived at in the year 2009. The learned Courts have concurrently discarded the said defence, which is set up on the ground that the witnesses examined in support of the defence of oral partition could not provide particulars with respect to the same. The alleged oral partition is not corroborated by any supporting documents, such as, entry in the records of Municipal Council etc.

4. The learned Advocate for the appellants contends that the decree is without jurisdiction, since suit for eviction against a gratuitous licensee must be filed before Small Causes Court. There is no Court of Small Causes at Wardha. Apart from this, the defendants have set up a title dispute in the written statement, which cannot be adjudicated by the Court of Small Causes. Contention with respect to jurisdiction of Civil Court is, therefore, rejected.

5. The other contention is that suit property is purchased by plaintiff from the terminal dues received by her, upon demise of her husband i.e. father-in-law of defendant No.1. It is contended that after the demise of father-in-law, the plaintiff, who is mother-in-law, got employment on compassionate basis and prior to that she had no separate source of income. It is, therefore, contended that the property cannot be claimed by the plaintiff to be her absolute property and that the property belongs to the entire family. The learned Courts have rejected the contention on the ground that although the defendants could have gathered relevant details with respect to amount received by mother-in-law upon demise of father-in-law from the employer, since the employer of father-in-law was Indian Railways, they did not bring any

documentary evidence in this regard and therefore, the contention could not be accepted. This Court is in agreement with the said finding, recorded by the learned Courts that the defendants failed to prove that the property was purchased by the plaintiff from terminal dues received by her, upon demise of her husband. It needs to be stated that there is a presumption of ownership of a person over the immovable property, sale-deed stands in his/her name. In the present case, the defendants have failed to dislodge the said presumption.

6. No substantial question of law therefore arises for consideration in the Second Appeal. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)