

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

SECOND APPEAL NO.228/2019

Prakash Tejram Chopkar.vs.Harishchanddra Sadashiv Gadekar & anr.

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

Court's or Judge's orders.

Mr. N. G. Solav, Advocate for appellant.

CORAM : V. M. DESHPANDE, J.

DATED : JULY 4, 2019

Heard Mr. Solav, learned counsel for appellant.

Original plaintiff filed a suit for declaration and possession. A declaration was sought to the effect that sale deed dated 31.05.2004 executed in favour of appellant by Ramchandra Gadekar (original defendant no.2) be declared as null and void and they be placed in possession.

The learned Judge of the trial Court dismissed the suit and one of the grounds for dismissing the suit was that in absence of suit for partition, the plaintiff cannot file a suit for declaration as claimed.

The learned appellate Court granted decree in favour of the original plaintiff and declared that the sale deed is not binding on the plaintiff to the extent of joint share of the plaintiff. In my view, the appeal is required to be **admitted**, on the following substantial question of law.

(i) Whether the appellate Court was right in observing that the suit property was an ancestral property of Ramchandra and Harishchandra?

Call for the record and proceedings.

Civil Application No.521/2019

This is an application for stay. The trial Court dismissed the suit. In the appellate Court, the Court has granted a decree in favour of the original plaintiffs.

Heard Mr. Solav, learned counsel for the applicant.

Issue notice to the non applicants, returnable on 29.08.2019.

In the meanwhile, there shall be stay to the execution of judgment and decree dated 12.11.2018 in Regular Civil Appeal No. 50/2014 passed by District Judge-2, Bhandara.

JUDGE