IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

13. SA/589/2013
With
CA/10648/2013 In SA/589/2013

SITARAM LAXMAN GHORPADE
V/S
MADHUKAR JAYWANT GHORPADE AND ORS

Mr. S.S. Jadhavar, Advocate for appellant.
Mr. C.T. Jadhav, Advocate for respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.
DATED : 7th October, 2015.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 45/2007, which was pending in the Court of Civil Judge, Junior Division, Shevgaon and also against the judgment and order of Regular Civil Appeal No. 50/2009 which was pending in the Court of District Judge-5, Ahmednagar. Both the sides are heard.

2. The suit was filed by present respondents for relief of partition and possession of agricultural land bearing Gat No. 107, admeasuring 2 Hectors, 90 R. situated at village Samangaon, Taluka Shevgaon. It is the case of plaintiffs that the suit property was owned by Laxman, predecessor of both plaintiffs and defendants. Defendant No. 1, appellant is the uncle of plaintiff

Nos. 1 and 2. Jaywant, father of plaintiff Nos. 1 and 2 was real brother of defendant No. 1. It is the case of plaintiffs that Jaywant and defendant No. 1 were the only legal heirs left behind by Laxman and the suit property was self acquired property of Laxman. It is contended that Jaywant and his successors are entitled to 1/2 share in the suit property and defendant No. 1 is entitled to have 1/2 share in the suit property. It is contended that in the past, names of only few members of joint family were entered in the revenue record and names of successors of Ratan, the deceased son of Jaywant were not entered. It is contended that in the year 2007, when a request was made to defendant No. 1 to do the needful in that regard, defendant No. 1 turned down that request and so, cause of action arose for the suit.

3. Defendant No. 1 admitted the relationship. He denied that the property was owned by Laxman, his father. He contended that the suit property is his self acquired property. He contended that he has made huge investment by creating facilities and for improving the condition of the land and the plaintiffs are not entitled to get any share in the suit property.

4. Issues were framed in the trial Court and both the

sides gave evidence. Both the Courts below have held that the property was self acquired property of Laxman and his two sons like Jaywant and defendant No. 1 are entitled to get equal share and so, 1/2 share is given to successors of Jaywant and remaining 1/2 share is given to defendant No. 1. There is the revenue record in that regard and there are also vital admissions given by the defendant in the evidence.

5. The revenue record like copies of mutation No. 676 of 1949 (Exh. 36) shows that Survey No. 134 was jointly owned by Laxman and one Jaywant Ghorpade. They had probably purchased the property together. Then they partitioned the property and Survey No. 134/1 came to the share of Laxman, the predecessor in title of the present parties. The mutation dated 3.7.1952 shows that after the death of Laxman, the names of his successors like defendant No. 1 and widow of Laxman were entered in the revenue record. There are 7/12 extracts of Survey No. 134/1 for the years 1974-75 onwards and they show that in 7/12 extract the name of defendant No. 1 only was mentioned as the owner and as the person cultivating the land. In view of the other record and admissions given by defendant No. 1, it needs to be presumed that defendant No. 1's name was shown in the revenue record as *Karta* of joint Hindu family as he was eldest

amongst the successors of Laxman. There is the record of consolidation and it shows that Survey No. 134/1 was given Block No., Gat number 107.

6. In the cross examination, defendant No. 1 has admitted that Survey No. 134/1 was given Gat No. 107 during implementation of consolidation scheme. He also admitted that his father Laxman had purchased the property and Laxman left behind the heirs like Jaywant and defendant No. 1. He admitted that the names of these two brothers were initially entered in the revenue record and after the death of Jaywant, the name of his widow was also entered in the revenue record. He has specifically admitted that after the death of Jaywant, he and widow of Jaywant were jointly cultivating the suit land. He admits that in the past, this land was given by way of mortgage by him and widow of Jaywant jointly to third party.

7. In view of the aforesaid revenue record and the vital admissions given by defendant No. 1, there was no alternative before the Courts below than to hold that it was the property of Laxman and the two sons of Laxman were entitled to get 1/2 share, each. Thus, nothing is made out on the basis of which substantial questions of law can be formulated.

8. In the result, appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/