

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

SECOND APPEAL NO.110 OF 2015

Uttam s/o Pandu Gaikwad,
Age 75 years, Occu. Agri.,
R/o Wadgaon, Post Akhegaon,
Taluka Shevgaon,
District Ahmednagar

..Appellant
(Original defendant No.1)

Versus

1. Santram s/o Pandu Gaikwad,
Age 64 years, Occu. Nil,
R/o Shevgaon, Taluka Shevgaon,
District Ahmednagar
2. Indubai Gudiba Kasbe,
Age 70 years, Occu. Nil,
R/o Bherdapur, Taluka Shrirampur,
District Ahmednagar
3. Bhagubai Vithoba Kasbe,
Age 67 years, Occu. Nil,
R/o Bherdapur, Taluka Shrirampur,
District Ahmednagar

..Respondents
(Resp.No.1 original plaintiff,
Respondents No.2 & 3
Orig.Defts No.2 & 3)

Mr A.A. Nimbalkar, Advocate for appellant
Mr M.R. Sonawane, Advocate for respondents 1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 10th August 2015

PER COURT

1. The present second appeal is by original defendant No.1 who suffered decree for partition and separate possession in Regular Civil Suit No.209 of 2006 on 20th April 2009, which was confirmed in Regular Civil Appeal No.134 of 2009 on 4th October 2014.

2. Learned Counsel for the appellant – original defendant No.1 would urge that though there is concurrent finding recorded against the appellant, the decree passed by the Court below is not binding on the appellant in view of the fact that part of the suit property i.e. Gut No.234 was originally forest land, which was allotted on lease to his father and his brother and later on was re-allotted to him in 1963. According to him, the Forest Department and State Government should have been the mandatory parties to the suit. In addition to above, the partition of the said property Gut No.234 cannot be left to the option of the Collector, as the Courts below failed to consider the provisions of Prevention of Fragmentation and Consolidation on Holdings Act.

3. In the analysis of the submissions of learned Counsel for the appellant, whether same can be given colour of question of law needs to be considered, as the said fact as regards suit property being forest property and allotment thereof in favour of appellant, was asserted by him. As the said fact was asserted, it was for the appellant to establish that the order of allotment in 1963 or subsequent thereto was placed on record by the appellant-defendant No.1 so as to justify that the said property Gut No.234 was allotted in his favour in his individual capacity. Though he has relied upon the revenue entries to read down that the land in question was allotted to him, however, the fact as regards allotment of said forest land in favour of his late father was not disputed and in view of the presumption about the jointness, it cannot be believed that property Gut No.234, an earlier forest land was allotted in favour of the appellant independently in 1963.

4. The findings recorded by both the Courts below are just and proper.

5. So far as the next contention of the appellant as regards the status of the property and same being hit by the provisions of Bombay Prevention of Fragmentation and Consolidation on Holdings Act, 1947 is concerned, it is required to be noted that the interest of the present appellant is properly protected by the lower appellate Court, particularly in view of finding recorded in paragraph 12 of the judgment.

6. As such, the said contention, in my opinion cannot be viewed as having colour of question of law.

7. In view thereof, no interference is made out. The appeal which is against concurrent findings, fails stands dismissed.

(N.W. SAMBRE, J.)

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