

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

**SECOND APPEAL NO. 40 OF 2015
WITH
CIVIL APPLICATION NO. 1388 OF 2015**

Sudam Bajirao Bhise & Ors. .. Appellants

Versus

Anantrao Bajirao Bhise .. Respondent

Mr. K.R. Doke, Advocate for the appellants.

Mr. A.R. Deokate, Advocate for sole respondent.

CORAM : A.V. NIRGUDE, J.

DATED : 03.08.2015

P.C. :-

1. This Second Appeal challenges concurrent findings of the Courts below. The appellants were original defendants. The respondent Anantrao was the plaintiff. He filed a suit for partition of ancestral property. Anantrao's brother Sudam & Raghunath and their children, who are now appellants, contested the suit as defendants. The main bone of contention was that there is one more piece of land which is not included in the

list of suit properties. This property should be brought into hotchpot for partition. They were targetting land Survey No.55/A, which was bearing earlier Survey No.830/A. It admeasured 6 H 86 R. This land stands in the name of respondent/ plaintiff - Anantrao since 1980 or so. The appellant/ defendant took a stand that this land is ancestral property of joint family. To this, respondent/plaintiff Anantrao filed counter, saying that this land came to him from his grand-father Babu. He also mentioned that this land was belonging to Babu. It came to Babu's share in the family partition, which occurred prior to 1980. Anantrao also stated in his deposition that when the will was executed, he was about 30 years old and that he nursed his grand-father Babu during his last days and out of love and affection his grand father chose him as the sole legatee. The appellant/defendant took up a stand that Babu had no locus to bequeath this property. According to them, this land did not come to the share of Babu.

2. The question, therefore, arose as to whether Babu had independent title to this piece of land. In order to prove this, Anatrao - respondent/plaintiff stated in his deposition that this piece of land came to the share of Babu in the contemporary partition. In addition to this, he also brought on record certified copy of judgment and decree in Suit No.29 of 1981, which Anantrao and his father Bajirao had filed against Khelba step brother of Bajirao. In this plaint, there is clear statement to the effect that land Survey No.830/A had gone to the Babu's share when partition had taken place between Babu and his son. This statement convinced the Courts below that Babu had independent title to the land Survey No.830/A=55/A and this part of defence of the appellant to the suit was dismissed. The suit of Anantrao in respect of remaining land was decreed, though Anantrao was given only 1/5th share, the appeal does not give rise to any substantial question of law.

3. Learned Counsel for the appellants has placed reliance on the following judgments.

- i) Devisingh s/o. Balaramsingh Raghuwanshi & Ors. Vs. Smt. Shailabai wd/o. Rajendrasingh Raghuwanshi & Ors., 1996(2) Bom.C.R.183.
- ii) Kisto Chandra Mandal & ors. Vs. Mt. Anila Bala Dasi & ors., AIR 1968 PATNA 487.
- iii) Krishi Upaj Mandi Samiti, Beawar Vs. M/s. Shree Gopal Products & ors., AIR 2009 RAJASTHAN 121.

4. Despite reliance on these judgments, the case would not give rise to any substantial question of law. The Second Appeal stands dismissed.

5. In view of dismissal of the Second Appeal, connected Civil Application does not survive and stands disposed of.

[A.V. NIRGUDE, J.]