

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

**Second Appeal No.317 of 2012  
With  
Civil Application No. 6225 of 2012**

Vaijanath s/o Yadoji Jatale.

**.. Appellant.**

**Versus**

Trimbak s/o Yadoji Jatale & Others.

**.. Respondents.**

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Shri. P.R. Katneshwarkar, Advocate, for appellant.  
Shri. Dhananjay M. Shinde, Advocate, for respondent  
No.1.  
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**CORAM: T.V. NALAWADE, J.**

**DATE : 16<sup>th</sup> SEPTEMBER 2015**

**ORDER:**

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.11/1999 which was pending in the Court of the Joint Civil Judge Junior Division Basmathnagar and also the judgment and order of Regular Civil Appeal No.17/2006 which was pending in the Court of the District Judge-1 Basmathnagar. Heard learned counsel for the appellant. He was expected to show that there is some point involved in the matter on the basis of which substantial question of law can be formulated.

2) The suit was filed by present respondent No.1 for relief of partition and separate possession in respect of land Gat No.16 admeasuring 1 hectare 19 R situated at Mohammadpur Wadi. The property was standing in the name of Yadoji. In the family partition amongst Yadoji and his sons this land had gone to the share of Yadoji. It is contended that after death of Yadoji the property is available for partition amongst the heirs of Yadoji and so the plaintiff and defendants who are four sons of Yadoji are entitled to equal share in the suit property. One-fourth share was claimed by the plaintiff in the suit.

3) The defendant No.3 contested the matter by filing written statement. Defendant Nos.1 and 2 did not file written statement. He took defence that on 27-7-1993 by applying to the revenue authority Yadoji gave the suit property to him and mutation No.169 was made by revenue authority and so he has become the owner of the property.

4) On the basis of aforesaid pleadings issues were framed. Both the Courts held that the suit property had gone to the share of Yadoji in the partition and after the

death of Yadoji the property is available for partition amongst the heirs of Yadoji. As partition amongst Yadoji and his sons was not disputed and as Yadoji had not partitioned the suit property or given the property in the way permissible in law to defendant No.3, the suit for partition is decreed in favour of the plaintiff. Yadoji was absolute owner of the property and so there was no question of transfer of property to defendant No.3 by Yadoji by simply giving application to revenue authority. He ought to have either sold the property or gifted the property as provided under sections 54 and 123 of the Transfer of Property Act. That way the transfer did not take place. The property could have been given by executing will also but that did not happen. So the aforesaid decisions are on questions of fact and as there are concurrent findings of Courts below, no substantial question of law as such is involved in the appeal. So, the appeal stands dismissed. Civil application is also dismissed.

Sd/-  
**(T.V. NALAWADE, J. )**

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