

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's orders.	Office Coram, Court's orders or Registrar's orders.	Court's or Judge's orders.
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SECOND APPEAL NO. 321 OF 2012

NANDUAPPA RAMAPPA NAMDE
VERSUS
BHAGUJIAPPA RAMAPPA NAMDE AND ORS

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Advocate for Appellants : Mr. Gore Ravindra Vitthal.

CORAM: T. V. NALAWADE, J.
DATED: 22nd SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.598 of 2004 which was pending in the Court of Civil Judge, Junior Division, Jalna and also to challenge the judgment and order of Regular Civil Appeal No.156 of 2009 which was pending in the Court of Extra Joint Adhoc District Judge, Jalna. The suit filed by the present Appellant for relief of partition and separate possession of house property is dismissed. Heard learned counsel for the Appellant.
2. The suit was filed in respect of house bearing No.1-

32-164/5 having size 110 feet X 30.75 feet, situated in Jalna. It is contended that this property was standing in the name of Ramappa, father of plaintiff and defendant Nos.1 to 6 and after the death of father the property was entered in the name of defendant No.1 as he was the eldest amongst the issues of Ramappa. It is contended that at the relevant time other issues of Ramappa were minor.

3. It is the case of plaintiff that the defendant No.1 is now trying to dispossess the plaintiff by saying that he is the absolute owner of the property. It is contended that some transaction is also made by defendant No.1 in respect of part of the suit property and therefore is he required to file the suit for partition. The defendant No.7 is the purchaser.

4. The defendants contested the suit. Defendant No.1 contended that the suit property is his absolute property and it was purchased by him under registered sale deed dated 10th February, 1976. He has specifically denied that it was a property of their father. Ramappa. He has admitted that he has executed the sale deed of the suit house in favour of one Sulochanabai

and it is contended that on the sale deed also the consent of plaintiff was obtained by the purchaser. Defendant No.7, the purchaser, filed written statement and she also contested the matter.

5. It was not the case of the plaintiff that his father had purchased the property from his own income in the name of the defendant No.1. As the sale deed was in favour of defendant No.1 and at the relevant time he had crossed the age of about 40 years, it was necessary for the plaintiff to plead and prove that there was some joint family property and from the income of that joint family property defendant No.1 had purchased the suit property. There is no such pleading and there is no such evidence also. In view of these circumstances, there was no other alternative before the Courts below than to dismiss the suit. No substantial question of law as such is involved in this matter.

6. In the result, the appeal is dismissed.

[T. V. NALAWADE, J.]

Dt.22/09/2015
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