

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

SECOND APPEAL NO. 701 OF 2015
WITH
CIVIL APPLICATION NO. 15876 OF 2015

Baban s/o Muktaji Taware and others .. Appellants

vs

Yogesh s/o Vitthal Taware and others .. Respondents

Mr. Sachin S. Kotkar, Advocate for appellants

Mr. Rahul R. Karpe, Advocate for respondent no.1-caveator

CORAM : SUNIL P. DESHMUKH, J.

8TH DECEMBER, 2015

ORDER:

1. This is defendants' second appeal against the judgment and decree passed by trial court in regular civil suit no. 465 of 2012 dated 24-04-2014 and maintained by the appellate court in judgment and order dated 07-08-2015 in regular civil appeal no. 231 OF 2014.

2. Appellants are the original defendants in aforesaid suit filed by respondents, seeking partition and possession of two properties bearing Guts no. 551 and 553 situated at village Walki, taluka and district Ahmednagar.

3. There is no dispute on facts about that Yogiraj and Bhau were two real brothers and aforesaid two properties had been inherited by them as ancestral properties. During lifetime of said two brothers, Gut No. 551 was shown in the name of Bhau while Gut No. 553 was being shown in the name of Yogiraj. Bhau had two sons, namely, Muktaji and Vitthal. It appears that Bhau predeceased Yogiraj. Subsequently, Yogiraj died issueless and under mutation entry no.688, said property bearing Gut no. 553 came to be recorded in the name of elder son of Bhau i.e. Muktaji in his capacity as *Karta* of the family. In the revenue record, gut no. 551 was being shown in the name of Vitthal. These entries continued for quite a long time.

4. Subsequently, it appears, dispute had arisen and as such aforesaid suit came to be filed for partition and separate possession.

5. Opposing the claim in the suit, the defendants had contended that partition already earlier, in fact, had taken place long back and mutation entries accordingly continued in respect of two lands i.e. guts no. 551 and 553 separately in the names of Vitthal and Muktaji respectively.

6. The courts below have appreciated that there is no dispute among the parties to the suit about the original nature of

properties bearing guts no. 551 and 553 to be ancestral, however, there is a dispute about that partition having already taken place among them.

7. In support of the contention about earlier partition, defendants hardly could adduce any evidence. In respect of partition between Muktaji and Vitthal, there is no contemporaneous record, either documentary or otherwise in support of theory of partition.

8. Both the courts having considered that the plaintiffs have claimed partition of the ancestral properties. Revenue entries in such a case, in the absence of other corroborative evidence, may not be able to be said to be evidence of that there had, in fact, been a partition intended. Mutation entry no. 688 records that Muktaji's name appears as Karta. He admittedly is elder between him and Vitthal. Defendants have not claimed that after death of Bhau, there was partition of Gut no. 551 and 553.

9. Learned counsel for the appellants, however, has made valiant attempt to impress upon that there was oral partition. He contends that prolonged, continuous uninterrupted record lends support to the case pleaded by defendants about that being reflection of intention of parties. Sheer long continuance of entries on record would hardly be proof of partition unless the

same is supported by corroborative evidence. Both courts on appreciation of evidence have concurrently held partition having not been proved by defendants which is not a finding shown to be perverse.

10. In the absence of any credible material on record, it is difficult to go by aforesaid submissions advanced by the appellant.

11. The second appeal does not appear to give rise to any substantial question of law. The same as such, fails and stands dismissed.

12. Consequently, civil application does not survive and stands disposed of as such.

SUNIL P. DESHMUKH, J.

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