

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.412 OF 2012
WITH
CIVIL APPLICATION (CAS) NO.112 OF 2014

(Shri Hindurao Vasant Bagal and others Vs. Shri Rajaram Tukaram Bagal and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri Sachin Raje i/b Shri G.C. Sawant Advocate for Appellants.

CORAM: R.K. DESHPANDE, J.

DATE: 20th JULY, 2015.

Regular Civil Suit No.211 of 1995 was decreed by the trial Court on 31.03.2004 and the operative part of the judgment of the trial Court is reproduced below:

- 1] *The suit is hereby partly decreed with costs.*
- 2] *It is held that plaintiffs are entitled to two anna share in the suit land.*
- 3] *Plaintiffs 2 anna share be partitioned and its separate possession be handed over to them.*
- 4] *The suit land being agricultural land, precepts of the decree be sent to Collector of this District for effecting partition.*
- 5] *Preliminary decree be drawn up accordingly.*

The original plaintiff preferred Regular Civil Appeal No.111 of 2010 before the Lower Appellate Court,

which has been dismissed on 08.11.2011. Hence, the original plaintiff is in this second appeal.

The decree passed by the trial Court was not challenged by the original defendant therefore, it is the plaintiff who had preferred appeal before the Lower Appellate Court and also this Second Appeal, to claim the share in the tenanted property, in respect of 32M Certificate under the Bombay Tenancy and Agricultural Lands Act is issued in the name of Tukaram the father of the defendant Nos.1 and 2. Both the Courts below have held that the certificate under Section 32M of the said Act is in the name of Tukaram. The proceedings were in the name of Tukaram and further finding is recorded that there is no evidence on record to show that the certificate was issued in the name of Tukaram as a Manager of the joint family. On this finding, the plaintiff is denied the partition in the tenanted property. Obviously, it was not an ancestral property and no substantial question of law arises for consideration by this Court. The Second Appeal is dismissed.

In view of dismissal of the Second Appeal, the Civil Application No.112 of 2014 does not survive and it accordingly stands disposed of.

JUDGE