

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.232 OF 2011

Mr. Namdev Sakharam Mali & Anr. Appellants

Vs.

Mr. Sakharam Dnyanu Mali Respondents
(deceased appellants are only LRs) & Ors.

None for the appellants.

Mr. Sarthak Diwan h/for Mr. A.M. Kulkarni, Advocate for Respondents
no. 3 to 11.

Coram : Smt. R.P. SondurBaldota, J.

Date : 15th April, 2015.

P.C.

1 The matter has been placed on the board for speaking to the minutes of the order dtd. 14th January, 2015 in order to correct name of appellant no.1. Mr. Diwan, the learned advocate appearing for the respondents points out that the name of appellant no.1 mentioned in the cause title of the order is “Mahadev” instead of “Namdev”. The correction in the cause title of the order be carried out and the order be read accordingly.

(Smt. R.P. SondurBaldota, J.)

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Vs.

Mr. Sakharam Dnyanu Mali Respondents
(deceased appellants are only LRs) & Ors.

Mr. Haribhau Deshinge, Advocate for the appellants.

Mr. A.M. Kulkarni alongwith Mr. Akshay Shinde, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.

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1 This Second Appeal is directed against the concurrent findings of facts by the trial court and the lower appellate court as regards partition of the joint family properties. The trial court, on the basis of the evidence led before it held that the suit properties had already been partitioned in the year 1970 as contended by the respondents. Therefore, there was no question of second partition. Since the appellants had no right to the suit properties, any transfer thereof cannot be challenged by the appellants.

2 An attempt was made to argue that appellant no.1 alone has received share in the joint family properties and that appellant no.2 has not received anything. Appellant no.2 has not stepped into the box to make any such claim. Appellant no.1 has also not deposed to that effect. During the course of the arguments, Mr. Deshinge submits that appellant no.2 was not present at the time the partition took place. Even if the submission is accepted, mere absence of appellant no.2 at the time of partition took place does not mean that he did not receive any share. There is no substantial question of law arising for consideration of this court. Hence the Second Appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)

Note : Corrected pursuant to speaking to the minutes dt. 15th April, 2015.