

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 195 OF 1993

Uttam Bapu BabarAppellant
V/s.
Hiralal Bapu Babar and Ors.Respondent
* * * * *

Mrs. A.R.S. Baxi, Advocate for the appellant.

Ms. Sheetal Kahad h/f. Mr. R.S. Apte, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.
12TH MARCH, 2015.

P.C. :-

1). This Appeal challenges concurrent findings of fact by the Courts below holding that the suit property is joint family property and by virtue of the document of partition dated 9th December, 1974 (Exhibit-53) it had fallen to the share of respondent no.1, the original plaintiff. This Second Appeal was admitted on the questions of law contained in Grounds no.1, 4, 18 and 20 which read as follows :-

“1). Was the court below correct in holding that the appellant and respondent no.1 and 2 formed Joint Hindu

Family ?

4). Was the Court below correct in holding that there is a nucleus to purchase the suit property ?

18). It is submitted that the respondent no.1 failed to prove that the appellant has blended his property into the common hotchpotch of the Joint Hindu family property ?

20). It is submitted that all the brothers started residing separately when they migrated from Koledhan to Vita and there is no evidence to show that respondents no.1 and 2 contributed something to purchase the property when the husband of respondent no.2 was already died in 1968.

2). Bare perusal of the grounds of appeal in respect of which the Second Appeal was admitted in the year 1993 shows that, the same are not substantial questions of law. They are infact the questions of fact decided by the Courts below. However, since the appeal is admitted and has been pending for hearing for the last 22 years, it will only be appropriate that the same is considered on merits.

3). Original respondent no.1 Hiralal filed Regular Civil Suit No. 233 of 1980 against the appellant, Uttam, respondent no.2, Malan his sister-in-law (widow of the third brother) and one, Shivaji Pandurang Khedkar (respondent no.3) for possession of the suit property i.e. northern portion of block-169 as described at para-1(9) of the plaint. During pendency of the present appeal, Hiralal died and his heirs have been brought on record. Hiralal claimed that, he alongwith the appellant and the husband of respondent no.2 formed a joint family

which owned the property at Block-169. They partitioned that property by executing "Vatap-patra" on 9th December, 1974 by which different portions of Block no.169 were apportioned for the three brothers. The suit property came to the share of Hiralal. The other two portions went to the share of the appellant and respondent no.2. The appellant had started using the portion of the suit property by installing handpumps and had refused to handover its possession to Hiralal. Therefore, he had filed the suit on 14th October, 1980. The appellant contested the suit disputing the joint venture of the family and the property. As regards the document of partition, he states at para-6 of his written statement that the contents thereof are acceptable to him. Thus, the document of Vata-patra was not specifically denied or disputed in his written statement. Respondent no.2 has supported Hiralal in his case of joint nature of the suit property and its partition by virtue of the document on Exhibit-53. When the suit went for trial, Hiralal produced xerox copy of the document stating that, the original was in the custody of respondent no.2. It has already been mentioned that, there is hardly any challenge to the document of Vata-patra in the written statement. The evidence of the appellant on the document is not any different. When Hiralal in his evidence gave details of the document and its contents, his cross-examination by the appellant was limited to asking him about the

person in whose name and the place from where the stamp paper was purchased. The answers to the questions put in cross-examination of the document read as follows :-

“ . I do not remember in whose name and by whom the stamp paper for Watap Yadi was purchased. It was written down on the very day when the stamp was purchased.”

4). As regards the appellant's own evidence, the same is limited to saying that “the document of Vatap-patra” is not admitted by him and “the signature on the document (Exhibit-53) now shown to him is mine”. Thereafter, the appellant, has not explained the circumstances in which he put signature on the Vatap-patra. In the absence of that explanation, the Courts below have held that the document was the evidence of jointness of the family, as also the properties. This inference drawn by the Courts below is a probable view of the matter. As such, the same cannot be disturbed in the limited jurisdiction of this Court in appeal under Section 100 Civil Procedure Code.

5). It has already been observed above that the grounds essentially reflect questions of fact. It is not even alleged that the findings are perverse. Therefore, infact there is no substantial question of law arising for consideration of the Court. The Second Appeal is therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)