

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

**SECOND APPEAL NO.167 OF 2014
WITH
CIVIL APPLICATION NO.417 OF 2014**

Shri. Neminath Bandu Khot Appellant

Vs.

Bandu Mallu Khot & Ors. Respondents

Mr. Amit Shete, Advocate for the Appellant.
None for the Respondents

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

Date : 4th March, 2015.

P.C.

1 This appeal is directed against the concurrent findings of the courts below as regards the right of the appellant in seeking re-partition of the ancestral property, which stood partitioned by way of compromise decree dtd. 11th November, 1982 in Regular Civil Suit No.253 of 1977. Respondent no.1 is the father of the appellant, respondent no.2 is his step-mother, respondents no.3 and 4 are his step-brothers, respondent no.5 is the sister of respondent no.1 and respondent no.6 is the sister of the appellant, who had originally joined him in filing the suit.

2 The appellant was born on 12th May, 1986, i.e. four years after the date of the partition by virtue of compromise decree. As such he could not have claimed any right in the ancestral property. Admittedly, the appellant is the illegitimate son of respondent no.1. His mother Yashodabai was the second wife of respondent no.1. For this reason also, he could not have claimed share in the ancestral property. The appellant claimed in the plaint that though by way of compromise decree, partition of the ancestral property had taken place between respondent no.1 and his siblings, the same was not given effect to and resultantly there was re-union of the family. Since the family was re-united, until after his birth, he would be entitled to have a share in the suit property.

3 The trial court has noted in it's judgment that the appellant has not even deposed about the suit property being held jointly after the compromise decree, so as to establish re-union of the family members. An attempt was made on the part of the appellant to argue before the lower appellate court that after the compromise decree, the partition by metes and bounds in terms of compromise decree had not taken place and the revenue records were also not mutated. The lower appellate court observed and rightly so, that no significance can be attached to these facts since by the partition arrived at by a compromise decree, status of the family as a joint family had been severed. Once the shares of respondent no.1 and his siblings were declared and carved out in the partition, the suit property lost their

status as a joint family properties. The lower appellate court has further observed that at the highest, the appellant can claim share in the separate property of the father by virtue of Section 13(c) of Hindu Marriage Act, which share would equal to his siblings.

4 There is no error in the findings of the courts below. Undisputedly, the appellant is the illegitimate son of respondent no.1. As such, he had no right either to challenge the partition that had taken place by way of compromise decree or to seek re-partition for declaration of his share therein. Hence, the Second Appeal is dismissed.

5 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

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