

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 535 of 2013

(Shri Bhagwan Madhav Ghodage
deceased thr L.R. Shri Gorak
Bhagwan Godage and ors Appellant

Versus

Shri Rangnath Madhav Godage
deceased thr L.H. Sou. Aashabai
Popat Zakane and ors Respondents)

Mr. M.A.Patil, Advocate for appellant
Mr. S.S.Punde, Advocate, for respondent.

CORAM : R.K.Deshpande, J.
DATED : 15th JUNE, 2015.

P.C.

The trial Court dismissed the Regular Civil Suit No. 10 of 1997 on 27.01.2010 for ownership of Gat No. 55 or in the alternative for partition. The appellate Court has dismissed the Regular Civil Appeal No. 54 of 2010 on 05.04.2013. Hence, the original plaintiff is before this Court against the concurrent findings of fact.

Both the courts below have rejected the theory of partition in the year 1978 put forth by the appellant/plaintiff. The theory of partition in the year 1980 put forth by the defendant has been accepted. In the partition on 1980, the plaintiff was given share to the extent of 2 hectare 78R in Gat No. 55. The appellate Court has accepted that. The learned counsel for the

appellant has urged that the courts below have failed to properly appreciated the evidence brought on record by the plaintiff in respect of theory of partition in the year 1978. Both the courts below have recorded the finding that the two witnesses examined by the plaintiff in respect of the theory of partition were not present at the time of partition, nor have they deposed about the partition. It is not the case of the plaintiff that he has become the owner of the property by virtue of any sale deed, will-deed or gift-deed. The claim for ownership was based exclusively upon 1978 partition, which has not been proved. No substantial question of law arises. The second appeal is dismissed.

(R.K.DESHPANDE, J.)

Rvjalit