

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 635 OF 2013

- 1 Dattatraya Shyamrao Patil
since deceased through his heirs
- 1A Amol Dattatraya Patil
Age 36 years, Occ : Professional
- 1B Sachin Dattatraya Patil
Age 33 years, Occ : Professional
Both residing at 1330/11-A,
Sutarmala, "A" Ward, Kolhapur
- 1C Sou. Padmaja Subhash Kadam
Age 39 years, Occ: Household
Residing at Wadrage Road, Opp
Shivraj College, Gadhinglaj
District : Kolhapur
- 2 Shri Vishnu Shyamrao Patil
Age 59 years, Occ : Service
- 3 Shri Vasant Shyamrao Patil
Age 57 years, Occ : Service
- 4 Shri Manohar Shyamrao Patil
Age : 55 years, Occ : Agriculturist
- 5 Smt Parvati wife of Shyamrao
Patil, age 94 years, Occ:
Household **(Deleted as per Court's
order dated 7/12/2014) (since
deceased, her L.Rs all
appellants)**

6 Smt. Shantabai wife of Shankar
Pawar, Age : 79 years, Occupation :
Household, Residing at Nilewadi
(Aitawadi Khurd), Taluka Walva,
District : Kolhapur)

Appellants
(Org. Appellants)
Deft. Nos. 1 to 6)

Vs

1 Smt. Akkatai Bhimrao Patil
Age 63 years, Occ: Agriculturist
Residing at Dudhgaon, Taluka
Miraj, District Sangli

2 Shri Vijay Bhimrao Patil, since
deceased through his legal heirs

2A Smt. Akkatai Bhimrao Patil
Age : 63 years, Occ : Agriculturist

2B Smt. Ashwini vijay Patil
Age : 44 years, Occ : Household

2C Kum. Rajashri Vijay Patil
Age : 17 years, Occ : Student

2D Kumar Aditya vijay Patil
Age : 16 years, Occ : Student
Nos. 1 to 2D residing at post
Kodoli, Taluka Panhala, District :
Sangli

Respondents

Mr Surel S. Shah for the appellants.

Mr Anilkumar K Patil for respondent Nos. 2A, 2C & 2D.

CORAM : R. K. DESHPANDE, J.

DATE : 3rd AUGUST, 2015.

P.C.

1. Special Civil Suit no. 98 of 2001 was decreed by the trial Court for partition and separate possession on 15/5/2004. In Regular Civil Appeal No. 273 of 2004, the decree passed by the trial Court was modified on the basis of cross-objection by the party. The original defendant Nos. 1 to 6 are before this Court in this Second Appeal.
2. The disputed portion bearing gat No. 203/B/1 situated at village Kakhe, tahsil Panhala, district Kolhapur, admeasuring 3 acres was allotted to the original defendant no.1 by an order dated 25/1/1972 passed by the State Government in terms of the Government Resolution dated 30 December 1971, governing the scheme for allotment of land to the families of the members of armed forces. The husband of the original plaintiff Bhimrao Patil was in the armed forces and he was the son of the original defendant No. 1 Shyamrao. The averment in the suit in question was that Shyamrao was allotted land as a trustee holding the property for and on behalf of the plaintiff, the widow of Bhimrao Patil. Obviously, the land was not ancestral property, but it was the property allotted by the Government under a special scheme. The original plaintiff being the widow and plaintiff no. 2 being his son would be entitled to a share in the property in question.

3. The suit was filed in the year 2000 and, therefore, the objection is raised that it is barred by limitation. The question of limitation is a question of law and fact . Neither the trial Court framed the issue nor it was raised before the lower appellate Court. Hence, there is no scope for this court to deal with such an issue which is raised for first time in Second Appeal being mixed question of law and fact. Be that as it may, the plaintiffs should have claimed title to the entire property being the widow and son of a member of the armed forces who have chosen to file a suit for partition and separate possession and she can always waive her right to the remaining part of the property. No substantial question of law arises.

4. Second appeal is dismissed.

(R. K. DESHPANDE, J.)