

SECOND APPEAL NO. 5 of 2011

Mr. Pratap Patil, Advocate for appellants.
Mr. A.A.Joshi, Advocate, for respondents.

CORAM : R.K.Deshpande, J.
DATED : 30th JUNE, 2015.

The trial Court dismissed Regular Civil Suit No. 41 of 2000 for partition and separate possession on 03.11.2006, essentially on two grounds i.e (i) the plaintiffs have failed to establish that the defendant nos. 3 and 4 have surrendered/relinquished their share in the suit property in favour of the plaintiff and defendant and (ii) that the suit is bad for non joinder of necessary parties and also for non inclusion of all the properties of the joint family. In Civil Appeal No. 148 of 2006, the lower appellate Court has set aside the decision of the trial Court and passed a decree for partition and separate possession. The plaintiff Nos. 1 & 2 and the Defendant Nos. 1 & 3 are held entitled to 9/40th share in the suit properties, whereas the Defendant Nos. 8, 9, 10 & 11 have been held entitled to 1/40th share each in the suit properties. This decision of the appellate Court on 21.10.2010 is the subject

matter of challenge in this second appeal by the Defendant Nos. 1 and 2.

Before the appellate Court, four sisters who had executed the relinquishment deed dated 20.05.1996 were joined as respondents/defendants. The said relinquishment deed has not been produced on record. Only on the basis of mutation entry, it is urged that there was a relinquishment. The lower appellate Court has held that the findings recorded by the trial Court on the question of relinquishment of share has not been challenged in appeal and the relinquishment has not at all been established. Even if relinquishment is proved, all the properties become joint family properties in common hotch pot. The appellate Court has held that all the properties become the joint family properties subject to partition and accordingly, a decree for partition has been passed. No substantial question of law arises, the second appeal is dismissed.

(R.K.DESHPANDE, J.)