

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

SECOND APPEAL NO. 364 OF 2015

Shri. Namdev Bandu DombaleAppellant/Plaintiff
V/s.
Shri. Ganpat Abaji Dombale (Deceased)
through his L.R.s
Shri. Bhojraj Ganpat Dombale & Ors. ...Respondents

Mr. Vikas Shivarkar for the appellant.
Mr. Prathamesh Bargude for the respondent no.1A.

**CORAM : K. K. TATED, J.
DATED : 28/10/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Second Appeal is preferred by plaintiff challenging the concurrent findings of facts recorded by both the Courts below.

3 In the present proceeding, the appellant plaintiff filed Regular Civil Suit No. 41 of 1994 in the Court of Civil Judge, Junior Division, Saswad for partition and separate possession of the suit property as described in paragraph 1A and 1B of the plaint.

4 The Trial Court framed following issues :

Sr. No.	ISSUES	FINDINGS
1	Does plaintiff prove that, the suit	In Negative

	property purchased in the name of defendant no.1 from the income of the joint family?	
2	Does plaintiff prove that, suit property is joint family property of plaintiff and defendant?	In Negative
3	Does plaintiff prove that, he has 1/6 th share in the suit property?	In Negative
4	Does Defendant no.1 prove that, suit property is his self acquired property and plaintiff has no concern about it?	In Affirmative
5	Is plaintiff entitled for the relief claimed?	In Negative
6	What order and Decree?	As per final Order
7	Whether the suit is bad for non-joinder of the necessary parties?	In Affirmative
8	Whether this court has pecuniary jurisdiction to try the suit?	In Affirmative

5 The Trial Court after considering the evidence on record dismissed the suit on the ground that property described in paragraph 1A was self acquired property of defendant no.1 purchased by him by Sale Deed dated 11.02.1948. In respect of property described in paragraph 1B of the plaint, the Trial Court held that it is difficult to partition the same and for non joinder of necessary parties. Hence, the Trial Court by decree dated 31.08.2004 dismissed the plaintiff's suit.

6 Being aggrieved by the decree passed by the Trial Court, plaintiff preferred Civil Appeal No. 19 of 2005. The Appellate Court after considering the evidence on record dismissed the Appeal on the ground that Defendant no.1 purchased the suit property as described in paragraph 1A of the plaint by Sale Deed dated 11.02.1948 and in

respect of property described in paragraph 1B of the plaint that it is difficult to partition the same among the co-parcners of HUF. Hence, the present Second Appeal.

7 The learned Counsel for the plaintiff submits that both the Courts below erred in coming to the conclusion that the property as described in paragraph 1A of the plaint was self acquired property of defendant no.1. He submits that the property described in paragraph 1A was purchased in the name of defendant no.1 by Sale Deed dated 11.02.1948 as he was Karta at that time. He further submits that both the Courts failed to consider that the defendant no.1 failed to brought on record any cogent evidence to show that at that time, he was having any source of income. Hence, the decree passed by both the courts required to be set aside.

8 The learned Counsel for the respondents vehemently opposed the present Second Appeal. He submits that both the Courts concurrently held that plaintiff failed to make out case that property described in paragraph 1A of the plaint was HUF property. Hence, there is no question of entertaining the present Second Appeal.

9 I heard both the sides at length. It is to be noted that in the present proceeding the suit property as described in paragraph 1A of the plaint was purchased by the defendant no.1 by Sale Deed dated 11.02.1948 from one Mahdev Shankar Dombé. On the basis of Sale deed, the name of the defendant no.1 was mutated in Revenue record. Apart from that, the defendant no.1 brought on record that, at that

time, he was doing business in APMC, Baramati. To that effect, he has placed on record certificate at Exhs. 174 and 175. Not only that, when the partition taken place between the co-parceners in the year 1956 except this property all other properties were distributed among the members. This itself shows that the suit property as described in paragraph 1A was self acquired property of defendant no.1.

10 In respect of the property as described in paragraph 1B of the plaint, both the Courts concurrently held that it is very difficult to partition the said property among the co-parceners, same is accepted by the plaintiff also. As there is concurrent findings of facts recorded by both the Courts and as the Appellant Plaintiff failed to make out any substantial question of law, I do not find any substance to entertain the present Second Appeal.

10 Hence, Second Appeal stands rejected.

(K.K.TATED, J.)