

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL ST. NO.5768 OF 2012
WITH
CIVIL APPLICATION NO.519 OF 2012

(Smt. Thakubai Vishnu Yevale and others Vs. Smt. Laxmibai Sitaram Yevale and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri D.S. Patil, Advocate for Appellant.

CORAM: R.K. DESHPANDE, J.

DATE: 13th JULY, 2015.

Regular Civil Suit No.168 of 1997 for partition and separate possession was dismissed by the trial Court on 12.03.2002. Civil Appeal No.302 of 2009 is also dismissed on 15.09.2011. Hence, this second appeal against the concurrent finding of fact.

Both the courts below have accepted the theory of partition of the suit property on the basis of admission given by the plaintiff himself in his evidence. The learned counsel for the appellant has urged that in fact there is no such admission by the plaintiff in his deposition. Therefore, the trial Court as well as the Appellate Court have committed an error in holding that the property was already partitioned.

I have gone through the copy of the plaint and the also ground No.(c) in the memo of appeal before the Lower Appellate Court. The plaintiff says that there is no partition by metes and bound and he himself has seen the family arrangement between the parties in respect of the suit property. The properties were accordingly mutated in the

names of parties and the sale deeds were executed in respect of some of the properties on 12.06.1962 and 17.06.1992 by the defendants. The suit was filed on 09.12.1997 claiming relief for partition and separate partition, including relief of declaration that the sale deeds executed are not binding upon the plaintiffs.

It is not in dispute that there is no written document placed on record, either showing family arrangement or partition. The plaintiff himself has urged family arrangement and this is the statement appearing in his deposition, which is accepted by the courts below in holding that the property was partitioned by way of family arrangement. Accordingly, the mutation entries were also carried out and the parties have taken the property subsequently. No substantial question of law arise. The second appeal is dismissed.

In view of dismissal of the Second Appeal, Civil Application No.519 of 2012 does not survive and it accordingly stands disposed of.

JUDGE