

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.218 of 2011
(Dattatray Hari Rane v. Dinanath Bhaskar Rane and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri B.K. Raje, Advocate for Appellant.

Shri A.S. Khandeparkar with Shri Amogh Karandikar, Advocates,
i/b Khandeparkar & Associates for Respondent Nos.1 to 6, 9, 10,
14, 15, 16, 21, 22 and 24.

Coram : R.K. Deshpande, J.

Dated : 7th July, 2015

1. The Trial Court passed a decree for partition and separate possession in Regular Civil Suit No.55 of 2004 on 27-8-2007. Regular Civil Appeal No.136 of 2007 filed by the present appellant, who is the defendant No.1, has been dismissed on 17-1-2011. Hence, this second appeal by the original defendant No.1.

2. In a suit for partition and separate possession in respect of the properties in Schedules-A, B and C, the appellant/defendant No.1 raised a defence that the plaintiffs have nothing to do with the said properties and they belonged to Hari, the father of the appellant/defendant No.1, and were recorded in his name on 3-2-1946, which is a mutation entry No.1440 at Exhibit 180. It is not the case of the appellant/defendant No.1 that the suit properties were self-acquired properties of his father Hari. Undisputedly, the suit properties were mutated in the name of Hari at the instance of Shankar, the ancestor of the plaintiff Nos.1 and 2. The suit properties were recorded in the name of

Shankar from 1928-29 to 1936-37 and the mutation entries produced on record at Exhibits 57 to 67 were certified on 19-1-1943. The appellant/defendant No.1 denied the relationship with Shankar, from whom the suit properties came to Hari. It is not the case of the appellant/defendant No.1 that there was mode of transfer in respect of these properties from Shankar to Hari. The ownership of Shankar over the suit properties was not disputed. The Courts below have held that Shankar had a brother, named Tanji, and the genealogy placed on record has been established.

3. The Courts below have dealt with all these aspects of the matter and the findings of fact are based upon the evidence available on record, which do not give rise to any substantial question of law.

4. The second appeal is dismissed.

5. In the order dated 9-6-2015 passed by this Court, it was observed that the matter shall be settled by the parties, and in case the matter is not settled, both the parties agree to pay the costs of Rs.1,000/- each. Since the matter is not settled by the plaintiff to pay the cost of Rs.1,000/- and the defendants together to pay the costs of Rs.1,000/- to the High Court Legal Services Committee, Mumbai within a period of one week.

Judge.

Lanjewar