

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

SECOND APPEAL NO.660 OF 2014

Smt.Sakhubai Ramu Gawari and Others .. Appellant

vs.

Shri Tukaram Vishnu Gawari and Others .. Respondents

Mr.S.C.Wakankar for the appellant

CORAM : K.K.TATED, J.
DATED : 21/10/2015

PC:

1 Heard the learned counsel for the appellant.

2 This Second Appeal is preferred by plaintiff challenging the concurrent finding of fact recorded by both the courts below.

3 In the present proceeding, plaintiff filed suit for declaration that property bearing Gut No.321 (Old S.No.132/2 admeasuring 40R) and Gut No.345 (Old S.No.129/4 admeasuring 60R) belong to HUF.

4 It was the case of the plaintiff that in partition, these two properties were kept in common for use of the members of the HUF. Hence, they have share in those properties. The Trial Court by judgment and decree dated 3.3.2008 dismissed the suit holding that the plaintiff failed to prove that these two properties were HUF

properties.

5 Being aggrieved by the decree passed by the Trial Court, plaintiff preferred Civil Appeal No.298 of 2009 before the District Court at Pune. The appellate court on the basis of pleading framed following points for consideration.

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether Appellants proved that the suit properties were not partitioned and was commonly used by both the contesting parties?	Not proved
2	Whether the Appellats proved their entitlement for partition and separate possession of the suit property?	Not proved
3	Whether the impugned Judgment and Decree requires interference?	No
4	What order?	As per final order
6	The appellate court confirmed the judgment and decree passed by Trial Court and dismissed the appeal. Hence, the present Second Appeal.	
7	The learned counsel for the appellant plaintiff submits that both the courts below failed to consider the fact that defendant no.1 sold the HUF property by sale deed dated 18.4.1997 to defendant no.10 without any authority. He further submits that the sale deed dated 10.7.1993 executed by predecessors of defendant nos.1 to 7 in favour	

of one Bhagu Maruti Melankar is not binding on the plaintiff because both the properties were belonging to HUF. He further submits that both the courts below failed to consider the provisions of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947. He submits that as per the said Act, the transaction entered into by defendant no.1 and predecessors of defendant nos.1 to 7 was void ab initio.

8 On the basis of these submissions, the learned counsel for the plaintiff submits that both the courts ought to have held that sale deed dated 18.4.1997 executed by defendant no.1 in favour of defendant no.10 and sale deed dated 16.9.1997 executed by defendant no.10 to 11 in respect of the land bearing Gut No.321 and another sale deed dated 10.7.1953 executed by predecessors of defendant no.1 to 7 in favour of Bhagu Maruti Melankar in respect of Gut No.345 was not binding on the plaintiff. On the basis of these submissions, the learned counsel for the plaintiff submits that judgment and decree passed by both the courts below require to be set aside.

9 I have heard the learned counsel for the appellant at length. Advocate for the appellant has placed on record copy of plaint, deposition of parties and other documents.

10 The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

11 In the present proceeding, the defendant no.1 specifically stated in his deposition that the partition of the HUF property took place before 70 years. The suit property i.e. Gut No.321 was allotted his fathers name i.e. Vishnu Genuji Gawari and since then, name of Vishnu Genuji Gawari was appearing in 7/12 extract. After his death in the year 1962, the 7/12 extract was transferred in the name of defendant no.1. Hence, the defendant no.1 was absolute owner of the suit property and therefore, he sold the same to defendant no.10 by sale deed dated 18.4.1997. Same thing is in respect of land bearing Gut No.345. This Gut No.345 was sold by predecessors to defendant no.1 to 7 by sale deed dated 10.7.1953 (Exhibit-110) to Bhagu Maruti Melankar whereas plaintiff filed present suit on 17.11.1998 i.e. after more than 30 years.

12 Considering these facts and the concurrent finding of fact recorded by both the courts below, I do not find any substantial question of law involved in the present Second Appeal. Hence, Second Appeal stand rejected.

(K.K.TATED, J.)