

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (C.A.S.) NO.161 OF 2015
(Shri Vishnu Mahadeo Mali Vs. Bhimrao Bhau Mali 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 Umesh R. Mankapure, Advocate for Appellant.

CORAM: R.K. DESHPANDE, J.

DATE: 22nd JULY, 2015.

For the reasons stated in the application, the application is allowed. The delay caused is condoned. The Second Appeal Stamp No.3551 of 2008 is restored.

The civil application stands disposed of.

Civil Application (C.A.S.) No.332 of 2008:

There is a delay of 17 days caused in filing the second appeal. For the reasons stated in the application, the application is allowed. The delay caused is condoned.

The civil application stands disposed of.

Second Appeal Stamp No.3551 of 2008:

Regular Civil Suit No.149 of 1995 was dismissed by the trial Court on 30.06.2003 holding that the plaintiff has failed to establish that the suit property was joint family property and therefore, he is not entitled to claim partition and separate possession in respect of suit property. The trial Court has held that the defendant Nos.1 to 3 have proved that the suit lands were self-acquired property of Bhimrao Mali. In Regular Civil Appeal No.149 of 2003 the Lower Appellate Court has maintained the decision of the trial

Court by dismissing the appeal on 04.09.2007. Hence, this second appeal by the original plaintiff against the concurrent finding of fact.

Bhau and Mahadeo were the two real brothers. The suit property was purchased on 19.03.1942 in the name of Bhau who died in the year 1986. The plaintiff is the son of Mahadeo and claimed that the property was jointly purchased out of the nucleus of the joint family in the name of Bhau being the *karta*. The defendant Nos.1 to 5 are the sons of Bhau, who have opposed the claim. Both the Courts below have concurrently held that Bhau was the exclusive owner of the suit property.

The learned counsel Shri Mankapure appearing for the appellant has urged that after the death of Bhau mutation entry No.189 in respect of the suit property was in the name of Mahadeo - the plaintiff and there is evidence brought on record to show that Mahadeo had discharged the mortgage money in respect of loan borrowed by Bhau. These contentions are urged to show that the suit property was treated as joint family property by conduct of parties.

It is not the case that the joint family of Bhau and Mahadeo possessed certain ancestral properties. There is no evidence that the property was purchased out of nucleus of the joint family. The property stands in the name of Bhau, there is nothing on record to show that the date on which mutation entry No.189 was carried out in the name of Mahadeo and for what purpose. There is also no evidence to connect the discharge of mortgage money by Mahadeo in

respect of the suit property purchased by Bhau. Thus, no substantial question of law arises in this second appeal. The second appeal is dismissed.

JUDGE

NSN