

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

rpa

SECOND APPEAL NO.642 OF 2006

Ganpat Nana Parkhi & Ors.	.. Appellants
Vs.	
Ulhas Baburao Parkhi & Ors.	.. Respondents

None present.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JUNE 8, 2015.

P.C. :

Trial Court dismissed Regular Civil Suit No.408 of 1996 for partition and separate possession on 30th June, 2000. Regular Civil Appeal No.681 of 2000 preferred by the plaintiff has been allowed on 18th April, 2006 and a decree for partition has been passed. The defendant nos.1, 2, 3 and 5 have preferred this Second Appeal in the year 2006. Notice before admission was issued on 23rd June, 2006. The matter was thereafter dismissed for non-prosecution on few occasions. But, ultimately restored on 10th April, 2015. Today the matter is called out on two occasions. None appears for the appellant. Almost ten years have lapsed but the Appeal has not been admitted as yet.

2 In terms of Section 100(3) of the Code of Civil Procedure, the substantial questions of law are required to be framed. The Appeal states that the following substantial questions of law are framed:

- a) *The judgment and decree passed by the lower appellate court is contrary to law, equity and evidence on record?*
- b) *The lower appellate court erred in allowing the Appeal ?*
- c) *The lower appellate court erred in holding that the properties at Schedule A are the ancestral properties of the Joint Family ?*
- d) *The lower appellate Court ought to have seen that when there is sufficient evidence to show that the said lands are self acquired properties of the Appellants?*
- e) *The lower appellate court ought to have seen that the trial court has decided the suit on the basis of the sufficient evidence and there was no reason to interfere with the same?*
- f) *The lower appellate Court erred in holding that Nana Mahipati was Karta of the joint family?*
- g) *The lower appellate court erred in holding that the properties mentioned in schedule B and C are purchased out of joint family funds when the family was joint?*
- h) *The lower appellate court erred in holding that the Nana Mahipati did not acquire separate rights by virtue of sale under Section 32G of*

B.T. & A.L. Act, although the entire evidence shows that the tenancy was a self acquired and the sale was in his name?

- i) The lower appellate court erred in holding that the Nana Mahipati did not purchase the properties at Schedule C out of his own income although there is sufficient evidence to that effect?*
- j) The lower appellate court ought to have seen that that there are sale certificates issued by the ALT under Section 32M of the B.T. & A.L. Act, 1948 which are conclusive evidence of the Defendant's possession and exclusive ownership?*
- k) The lower appellate court ought to have seen that there is sufficient evidence to show that the Appellants are in possession of the entire property and the trial court has recorded finding to that effect?*
- l) It ought to have been seen that there is nothing on record to interfere with the findings recorded by the trial Court?*
- m) The lower appellate court erred in holding that the suit filed by the Plaintiffs is within limitation. It ought to have been seen that the suit is barred by limitation ?*
- n) It ought to have been seen that as mentioned in para 1 of the Plaint there are four sons of Mahipati and the Plaintiff Ulhas has filed suit claiming property only in the name of Nana Mahipati, whereas major portion of the*

property stands in the name of Sadashiv which was not included in the suit?

- o) It ought to have been seen that the real ancestral property stands in the name of Sadashiv which was not included in the suit and therefore the suit for non-joinder of cause of action?*
- p) The lower appellate court erred in holding that mere entries in the record of rights in the name of Nana Mahipati will not give him status of independent owner. It ought to have been seen that the law as settled is clear that the entries in the record of rights have presumptive value and unless the same is rebutted?*
- q) The judgment and decree passed by the District Court is liable to be set aside ?*

3 All the questions pertain to the challenge to the finding of facts. In fact, so called substantial questions of law are merely the grounds of challenges. There is no substantial question of law formulated under Section 100(3) of the Code of Civil Procedure. The Appeal, is therefore, dismissed.

(RAVI K. DESHPANDE, J.)