

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.500 of 2012
(Shri Kisan Anna Kale and others v. Shri Dilip Baban Kale and others)

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

Shri Drupad Patil, Advocate for Appellants.

Coram : R.K. Deshpande, J.

Dated : 17th June, 2015

The Trial Court passed a decree for partition and separate possession on 28-3-2006. The Appellate Court has modified the said decree to some extent, on 10-2-2012. Hence, this second appeal by the original defendant Nos.1 to 4.

The dispute in this second appeal pertains only to the land survey No.615 (new Survey No.114), admeasuring 2.64 HR, and the land survey No.616/1+2 (new Survey No.113/1+2). The appellants/defendants claim that the sale-deeds are in their names and hence these properties should have been excluded from partition. The Trial Court recorded the finding that the lands survey Nos.615 and 616/1+2 are the self-acquired properties of the appellants, whereas the lower Appellate Court has held that these properties were earned out of the nucleus of the joint family properties. The Trial Court recorded the further finding that the appellants have purchased the land survey No.615 for a total consideration of Rs.17,000/-. The judgment of the Appellate Court shows that Kisan, the father of the appellants, sold house property No.216, CTS No.818, as a Manager of the joint family, for a total consideration of Rs.10,000/- to one Shivaji Damodar Kalambe by a registered sale-deed dated 5-12-1979 at Exhibit 86

and by another sale-deed dated 7-4-1980 at Exhibit 87. The land survey No.160/3, admeasuring 0.36 H, was sold to one Anil Babanrao Kale for a total consideration of Rs.14,000/-. The adequate nucleus was available in the hands of the father of the appellants when the properties in question were purchased on 14-4-1980. The Courts below have disbelieved the theory that the mother of the appellants/defendants No.3 and 4 have purchased these two properties out of her own income as a labourer, and by taking some amount from her brother.

The contention of the learned counsel for the appellants is that if the amended provision of Section 6 of the Hindu Succession Act, 1956 is taken into consideration, then the shares of the plaintiffs will be reduced as compared to one granted by the Courts below. There cannot be any dispute that in such event, the share of the appellants/defendants should also get reduced.

Thus, no substantial question of law arises in this second appeal. The second appeal is dismissed.

Judge.

Lanjewar