

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 343 OF 2013
ALONGWITH
CIVIL APPLICATION NO. 949 OF 2013
IN
SECOND APPEAL NO. 343 OF 2013

Shri. Shankar Vithoba Nagare

.....Appellant

: V/S :

1. Suka @ Sukdeo Mahadu Nagare and Ors.

...Respondents

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Mr. Girish Agrawal, Advocate for the appellant.

Mr. Sachin Gite, Advocate for the respondents.

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Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2015.

P.C. :-

1). The appellant is the original plaintiff who challenges the concurrent findings of facts by preferring the present appeal. He had filed Regular Civil Suit No. 22 of 2007 against the respondents seeking partition of the suit property. The suit was dismissed by the trial Court by its judgment and decree dated 13th February, 2008. The appellant preferred an appeal to the District Court being Civil Appeal No. 95 of 2008. That appeal came to be dismissed on 28th January, 2013.

2). The properties in respect of which, the appellant sought partition are at Gat no.96, 156 and 158. As regards Gat No. 158, the

appellant does not press the relief of partition since this property had been purchased by the father of respondents no.1 to 3 and there is no evidence on record to establish that, at the time of purchase there was any nucleus of the income of joint family property out of which the same could be purchased. Therefore, the properties that remained for consideration are the properties at Gat no.96 and 156. According to the appellant, though partition of the joint family properties had taken place during the lifetime of the original owner, Rama, these two properties had been excluded, as they were not cultivable. The properties were used for grazing of the cattle.

3). The appellant is the grandson of Rama. He has not produced any evidence to establish that at the time of partition of other properties, the lands at Gat no.96 and 156 were excluded and that the same are enjoyed jointly by the parties. The appellant examined himself and two witnesses, one of whom is a relative and the other is a neighbour. Both the witnesses deposed about the actual joint use of the property for grazing of the cattle. Respondent no.1 examined himself in support of the claim that, the partition during the lifetime of Rama was complete partition and during the partition, the land at Gat no.96 and 156 had fallen to the share of Mhadu, his father. This evidence of the respondents is not challenged in the cross-examination. Further, it is

not even suggested to the witness that, there was any partial partition at the relevant time. Since the fact of partition of the joint property is admitted by the appellant and it has been contended by him that the partition was only partial, the entire onus of establishing that the partition was not total but was partial, was upon him. This onus has not been discharged by the appellant. As a consequence, the Courts below have dismissed the suit.

4). There is reliance placed by the appellant on the revenue records of 7/12 extract to contend that the long standing revenue records would indicate the joint nature of the suit property. It is well established legal position that, the revenue records are maintained only for fiscal purposes and do not decide the rights of the parties. The revenue records cannot form cogent piece of evidence of title and no case can be solely dependent upon it, particularly when the parties have examined themselves and the evidence of the appellant is not satisfactory. Hence, the Second Appeal is dismissed.

5). With the dismissal of the Appeal, Civil Application No. 949 of 2013 becomes infructuous and does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)