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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.221 OF 2012
WITH
CIVIL APPLICATION NO.1118 OF 2010
WITH
CIVIL APPLICATION NO.206 OF 2015

Rukminibai w/o. Bapu Khadtare & Ors. ..Appellants.
V/s.
Shivaji Hanumant Shinde & Ors. ..Respondents.

Mr.Uday Warunjikar for the appellants.
Mr.G.M.Savagave for the respondents.

CORAM : R.K.DESHPANDE, J.

DATED : 5TH AUGUST, 2015

P.C. :-

1. This Second Appeal is by the original plaintiffs who had filed Regular Civil Suit No.8/1987 for partition and separate possession which was dismissed by the trial Court on 29th September, 1999. Regular Civil Appeal No.549/1999 preferred by the plaintiffs has also been dismissed on 20th January, 2010. The lower Appellate Court has however allowed the counter claim filed by defendant No.1 holding that he is entitled to recover possession of the portion purchased by sale deed at Exhibit-120 which is dated 15th December, 1983.

2. Both the Courts below are concurrent in holding that the plaintiffs had failed to establish that the suit property was ancestral of the joint family property. The trial Court recorded the finding that defendant No.2 had failed to establish that the suit property is her self acquired property. The lower Appellate Court has reversed this finding and it has been held that defendant No.2 has proved and the suit property to be her self acquired property.

3. Undisputedly, the property stands in the name of defendant No.1. The contention of Mr.Warunjikar, the learned counsel for the appellant is that once the existence of some joint family property is established along with the income derived therefrom, the burden shifts upon defendant No.2 to establish sufficient income to purchase the suit property from her own funds.

4. Bapu and Balbhim were the two brothers. The defendant No.2 is the widow of Balbhim, whereas plaintiff No.1 is the widow of Bapu and plaintiff No.2 is the son of Bapu. The suit property was purchased in the name of defendant No.2 on 15th December, 1983 by a registered sale deed. The learned counsel

has invited my attention to the oral evidence of defendant No.2 wherein she has deposed that her husband was working as a teacher and she was also in the employment. It is also the evidence on record that the income derived from the ancestral property which is agricultural land was distributed separately between the family of Bapu and Balbhim equally. In such a situation, the lower Appellate Court has taken a possible view to hold that defendant No.2 has established that the property in question is her self acquired property, which does not give rise to any substantial question of law. The second appeal is dismissed.

5. In view of the dismissal of the appeal, the civil applications do not survive and the same are also disposed of.

Judge