

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

SECOND APPEAL NO. 570 OF 2010

Dinkar Ommanna Koli & Ors.	...	Appellants
V/s.		
Kallappa Shripati Koli & Ors.	...	Respondents

.....
Mr. Amit B. Borkar, Advocate for the Appellants.
.....

CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 4, 2015.

P.C.

The trial Court dismissed the suit for partition and separate possession after recording the finding that the suit properties were already partitioned and the parties are in occupation and possession of their respective share. The decision of the trial Court dated 30th September, 1994 in Regular Civil Suit No. 49 of 1997 was the subject matter of challenge in Regular Civil Appeal No. 587 of 1994 which has been dismissed on 16th July, 2001. The plaintiff is, therefore, before this Court against the concurrent finding of facts.

2 The aspect of previous partition has been dealt with by the Lower Appellate Court in paragraph no.8 which is reproduced below:

“8.....

From the above entire evidence, it can be said that there was partition in between the above 3 brothers and each brothers have cultivating his 1/3rd share since then. Under such circumstances, it cannot be said that the suit properties are joint family properties of appellants and respondents. From the evidence on record, it cannot be said that the suit properties are common properties of appellants and the respondents.”

3 The findings regarding separation of the parties in respect of the joint family property is based on the 7 x 12 extract and the other evidence brought on record including the decree passed in Regular Civil Suit No.270 of 1943. There is no perversity in recording the finding. No substantial question of law arises. Second Appeal is dismissed.

JUDGE