

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

**SECOND APPEAL NO. 529 OF 2013
WITH
CIVIL APPLICATION NO.1243 OF 2013**

1. Kondiba Shankar Jamdade
age 65 years, occ. Agriculture
R/o Jalochi, Tal. Baramati, Dist. Pune
2. Dhondiba Shankar Jamdade
age 65 years, occ. Agriculture.
R/o Jalochi, Tal. Baramati, Dist Pune .. Appellants.

V/s

1. Muktabai Rambhau Zagade
age 52 years, occ. Agriculture
R/o Kajhad Tal. Indapur, Dist. Pune
2. Arjun Shankar Jamdade
Age 56 years, occ. Agriculture
R/o. Jalochi Tal. Baramati
Dist. Pune .. Respondents.

Mr. Nitesh V. Bhutekar, for appellants.

Mr. P.S. Dani, Sr. Counsel i/b Mr. Siddharth Karpe, for respondent
Nos. 1 and 2.

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

Date : 17th February, 2015

P.C.

1. By the present appeal, appellants challenge the concurrent findings of facts and law by the Courts below, in Regular Civil Suit No.114 of 2008 for partition of joint family properties. Respondent No.1 is the original plaintiff. Appellants and respondent No.2 are the original defendants.

2. The appellants had contested the suit on the ground that the same is barred by the law of limitation. It was also their contention that partition of the joint family had already taken place as far back as the year 1982 and hence the suit for partition filed in the year, 2008 was not maintainable. Respondent No.1 had allegedly received value of her share in the suit properties. The Trial Court on appreciation of the evidence led before it held that there was no partition of the joint family property in the year 1982. What had happened then was only family arrangement between the brothers i.e. appellants and respondent No.2. The lower appellate court has confirmed the findings.

3. Mr. Bhutekar, the learned advocate for the appellants submits that findings of the courts below as regards the partition are perverse because there is no proper appreciation of the categorical

admission.

4. The courts below have considered in detail the admission by respondent No.1 in her deposition. The courts below have noted that the appellants and respondent No.1 do not dispute the right of respondent No.1 to a share in the suit properties. It is their case, however that in the year 1982, respondent No.1 received value of her share in the form of cash amount of Rs.25,000/-, articles i.e. electric motor pump and PVC pipes worth Rs.15,000/- and the huge amount spent on her marriage. After partition in the year 1982, the revenue records were mutated vide mutation entry No.2574. Respondent No.1 in her cross-examination admitted that the suit properties were partitioned between her three brothers prior to 25-30 years. But at the same time she denied that she had received Rs.25,000/- and the articles as alleged. The mutation entry No.2574 does not mention partition of the suit properties. On this background the courts held that the stray admission given by respondent No.1 who is a rustic lady is not sufficient to establish partition. This is a probable view of the matter and there is nothing perverse about it.

5. The courts below further noted that there is no evidence other than the word of appellant No.2 produced to show that

respondent No.1 was given Rs.25,000/- in cash and articles worth Rs.15,000/- in the year 1982 in lieu of her share in the suit properties. Therefore, the appellants had failed to establish that partition of the suit properties was effected in that year. There is nothing to indicate that this finding as regards the partition of the suit property by the Court below is perverse. Next once it is held that there was no partition of the joint family property, no error can be found on the answer to the question of limitation. Therefore, appeal is dismissed.

(Smt. R.P SondurBaldota, J.)

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V/s
Muktabai Rambhau Zagade and anr. .. Respondents.

Mr. Nitesh V. Bhutekar, for appellants.
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1. In view of dismissal of Second Appeal, this civil application does not survive. The same is accordingly disposed of.

(Smt. R.P. SondurBaldota, J.)