

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.496 OF 2014
WITH
CIVIL APPLICATION NO.1151 OF 2014

Dnyaneshwar Fakira Jadhav ... Appellant
Vs.
Fakira Karbhari Jadhav and others ... Respondents

Mr. Suresh M. Sabrad for Appellant.

CORAM : R. G. KETKAR, J.
DATE : 7TH APRIL, 2015

P.C. :

Heard Mr. Sabrad, learned Counsel for the appellant at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.1 has challenged the judgment and decree dated 05.08.2009 passed by the learned Civil Judge, Junior Division, Chandwad, District Nashik in Regular Civil Suit No.113 of 2004 as also the judgment and decree dated 10.01.2014 passed by the learned District Judge-2, Niphad, District Nashik in Civil Appeal No.106 of 2009. By these orders, the Courts below decreed the Suit instituted by respondent No.1 - original plaintiff for partition and separate possession.

3. In support of this Appeal, Mr. Sabrad reiterated the submissions that were advanced before the Courts below. He submitted that the disputed properties are Survey No.1983 and house properties. Respondent No.1 did not implead all the necessary parties namely, the sisters of defendant No.1. He further submitted that respondent No.1 had disposed of the property without any legal necessity. However, the

Courts below failed to appreciate the evidence on record. He, therefore, submitted that the Appeal requires consideration as it involves substantial question of law.

4. Both the Courts, after considering the evidence on record, have held that the properties are the ancestral properties and respondent No.1 is entitled to partition and separate possession. The Courts below also found that the defendant No.1 did not establish that the respondent No.1 had sold any property as is evident from paragraph 15 of the trial Court's judgment.

5. The findings recorded by the Courts below cannot be said to be perverse being based upon no evidence or contrary to evidence on record. Merely because another view is possible on the basis of evidence, this Court will not exercise its jurisdiction under Section 100 C.P.C. In my opinion, no question of law much less any substantial question of law arises in this Appeal. Hence, Second Appeal fails and the same is dismissed.

6. In view of the dismissal of the Appeal, nothing survives in Civil Application No.1151 of 2014 for stay and the same is disposed of as such.

(R. G. KETKAR, J.)