

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 618 of 2013
(Bhalchandra Eknath Yadav vrs. Ganesh Bhalchandra Yadav)

Mr. S.M.Gorwadkar, Senior Counsel assisted by Shri Ravi G. Shinde,
Advocate for Appellant

CORAM : R.K.Deshpande, J.
DATED : 09th JUNE, 2015.

P.C.

Heard Shri Gorwadkar, the learned Senior Advocate assisted by Shri Ravi G. Shinde.

The trial court has dismissed the suit for decree of possession and prohibitory injunction restraining the defendant from entering into the property. The appellate court has maintained the order of the trial Court.

The appellant/plaintiff is the father, whereas the respondent/defendant is the son. Undisputedly, the property in question was the coparcenary property and the respondent being the coparcener was entitled to share in it. The courts below have, therefore, held that the plaintiff cannot be given exclusive possession of the property and the respondent-defendant cannot be restrained from entering into the property. Shri Gorwadkar, the learned Senior Advocate has invited my attention to the circumstances brought on record to indicate that the respondent-defendant has waived his right in the coparcenary property. Merely because the

respondent has signed certain registered exchange deeds between the father and his brother, that would not mean that he has relinquished his claim in the joint family property. No evidence is brought to my notice to indicate the express waiver or relinquishment of right by the defendant. The learned Senior Advocate has relied upon the decision of the Apex Court in the case of ***Commissioner of Wealth Tax, Kanpur and others vs. Chander Sen and others***, reported in **(1986) 3 SCC 567**, which turns upon its own facts. No substantial question of law arises in the matter. The second appeal is dismissed.

(R.K.DESHPANDE, J.)