

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

**SECOND APPEAL NO.169 OF 2010
WITH
CIVIL APPLICATION NO.472 OF 2010
IN
SECOND APPEAL NO.169 OF 2010**

1. Dhondiram Pundlik Aher
Age 58 years, occ. Service.
R/o. Deogaon, Tal. Niphad,
District Nashik.

2. Ganpat Pundlik Aher
Age 43 years, Occ. Service
R/o. Sonshi, Tal. Igatpuri.

.. Appellants.
(Ori. Defendants No. 3 &4)

V/s

1. Phulyabai Soma Mahajan
Age 63, Occ. Labourer,
R/o. At Post Bahal,
Taluka Chalisgaon
(Through Legal Heirs)

1A. Daga Soma Mahajan
Age : 45, occ. Agriculture
R/o. At Post Bahal,
Taluka Chalisgaon
District Jalgaon.

1B. Sumanbai W/o. Nimba Mahajan
Age 60, Occ. Household
R/o. Wade, Taluka Bhadgaon,
Dist. Jalgaon.

1C. Indubai w/o. Girdhar Mahajan
Age 55, occ. Household
R/o. Parola, Dist. Jalgaon.

1D. Vimalbai W/o. Dattu Mahajan
Age : 43, occ. Household,
R/o. Dhule, Dist. Dhule.

2. Rakhamabai Gangadhar Aher
Age 61, occ. Household.
R/o. Anandwadi, Tal. Nandgaon

3. Chandrabhagabai Rangnath Aher
Age 59, Occ. Household,
R/o. Shivaji Nagar,
Varangaon Road, Narayan Kabade
Chawl, Bhusaval, District. Jalgaon

.. Respondents.
(Respondents No. 1 to
3 Org. Plaintiffs.)

Mr. B.D. Joshi, for Appellants.

Mr. S.R. Page, for Respondent No.1A.

Coram : Smt. R.P. SondurBaldota, J.
Date : 17th April, 2015

P.C.

1 This appeal is directed against the concurrent findings of the Courts below in a suit for partition.

2 One Ganpat Naba Mail was the owner of the suit property. He died leaving behind his wife and five daughters. The wife also died on 18th February, 1968. Three of the daughters i.e. original respondent No.1, respondents No.2 and 3 (original plaintiffs) filed Regular Civil Suit No.162 of 1985 for partition of the suit property against the other two daughters (original defendants No. 1

and 2) and the appellants (original defendants No.3 and 4) who are sons of one of the daughters. The parties shall hereinafter referred to by their original nomenclature.

3 Defendants No. 2 and 3 are the sons of original defendant No.1, who is no more. Defendant No. 2 has not been impleaded to the present appeal. Further during pendency of this application for admission, respondent No.1C and respondent No. 2 also expired. The appeal has been dismissed against them for want of taking necessary steps for bringing on record their heirs. Consequently, the present appeal is bad for non-joinder of the necessary parties. It is liable to be dismissed on this ground alone.

4 There is no dispute as regards the ownership of the suit property by Ganpat and the relations between the parties. The suit was contested mainly by defendants No. 3 and 4. They claimed that plaintiff had relinquished their shares in the suit property, in lieu of which they had received monetary compensation. Thereafter on 15th May, 1971, they had made an application to Talathi for deleting their names from the Revenue Record. Talathi accordingly made mutation entry No.874 and the names of the plaintiffs were deleted. Defendant No.1 subsequently transferred the suit property to the names of defendants No. 3 and 4 and as such, they are owners thereof. The plaintiffs had denied that there was any relinquishment of rights in the suit property by them or receipt of any monetary compensation by them. They denied having made any application to the Talathi for any purpose. They alleged that defendant No.3 who is working with

Revenue Department and is also Gramsevak took advantage of relationship as also illiteracy of the plaintiffs and obtained their thumb impressions on 15th May, 1971 on a blank paper by making representation that it was for entering the names of heirs of their mother on record. Therefore, any mutation of revenue record on the basis of the false document was of no consequence.

5 The Trial Court by its judgment and decree dated 30th October, 1993 held that the suit property was not ancestral property at the hands of Ganpat but was his own property and on his death and on the death of his wife Vansabai, the plaintiffs, defendants No. 1 and 2 became joint owners of the suit property. Though its possession had remained with defendants No. 1 and 2, each plaintiff had 1/5th share in the suit property and as such, they were entitled for partition, also the defendants had failed to establish that the plaintiffs had given application for deletion of their names from the Revenue Record. The Suit was not contested by the defendant No.2. It had proceeded for ex-parte hearing against her. On the above findings, the Trial court decreed the suit declaring that each of the plaintiff has 1/5th share in the suit property and gave directions for effecting partition.

6 Being aggrieved by the judgment and decree, defendants No.3 and 4 approached the District Court with Civil Appeal No.119 of 1993. The first appeal was also against the plaintiffs and defendants No. 1 and 2 were not impleaded thereto. The District Court upheld

the findings of the Trial Court that the plaintiffs and defendants No. 1 and 2 were joint owners of the suit property having inherited the same from their parents, and that plaintiffs had not moved any application to Talathi for deletion of their names from the record of rights and as such each daughter had 1/5th share in the suit land. The other defence taken by the defendants No.3 and 4, which was also the defence before the District Court was that they had become the owners by adverse possession. The Courts below had rejected that defence.

7 Considering the dispute between the parties, the issues framed and the findings given and the reasons for the findings, it is clear that no substantial question of law arises for consideration of the Court in the present appeal. Once, it has been held that the suit property was originally owned by Ganpat and the plaintiffs alongwith the defendants No.1 and 2 are his daughters, on the death of Ganpat and his wife, the daughters became entitled to the suit property. Therefore, they could loose their right to the property only on legal transfer of their shares by one of the different modes of transfer. The defendants had alleged relinquishment of rights by them, which claim has been rejected by the Courts below. That being the finding of the fact, cannot be interfered with by this Court, unless the findings is established to be perverse. There is nothing perverse about the findings of the Courts below, because the evidence on record supports the findings. Thus, there is no substantial question of law arising for consideration of the Court in the appeal and on merits also, the appeal is liable to be dismissed.

8 In view of dismissal of Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

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