

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

SECOND APPEAL NO.108/2015

Kamal Hanumant Ghadge & Ors.	... Appellants
Vs.	
Malan Sukhdeo Kale & Ors.	... Respondents

Mr. Anilkumar K. Patil for the Appellant

CORAM : K. K. TATED, J.
DATE : AUGUST 25, 2015

PC.:

1. Heard. This appeal is preferred by Defendant Nos.2 to 7 challenging the concurrent findings of facts recorded by both the courts below.

2. In the present proceedings, the Respondent Plaintiff filed Regular Civil Suit No.214/2001 in the court of Civil Judge, Junior Division Waduj, Dist. Satara for partition and separate possession of suit property which was opposed by the Appellant - Defendant Nos.2 to 7 on the ground that the partition already took place on 01/01/1974 and therefore, there is no question of allowing the suit filed by the Respondent Plaintiff. To that effect, the Defendants placed on record a document of partition Exhibit- 76. The Trial Court, in paragraph 12 of the judgment and decree held that at the time of preparing the said document of partition Exhibit-76, all the co-sharers were not present. It was executed behind the back of the Plaintiff. Hence, that was not binding and therefore, the Trial Court decreed the suit.

3. Being aggrieved by the said decree, the Defendant Nos.2 to 7 preferred Regular Civil Appeal No.301/2010. The lower Appellate Court, on the basis of pleading of both the parties, framed following points for determination:

	POINTS	FINDINGS
1	Whether Plaintiff proves that she has share in the suit properties ?	Yes
2	Whether Defendant No.1 proves partition by father in the year 1975 ?	No
3	Whether Defendant proves that he has constructed 5 khans tin sheet shed incurring amount of Rs.50,000/- and made development in the suit lands allotted to his share incurring Rs.1,00,000/- ?	No
4	Whether Plaintiff is entitled for partition and separate possession ? If yes, what are shares of the parties ?	Yes, as per order of the Trial Court
5	Whether impugned judgment and decree to be interfered ?	No.
6	What order ?	As per final order

4. The lower Appellate Court, considering the evidence on record held that the document about the partition being Exhibit-76 was not binding on the Respondent Plaintiff. These facts were recorded by the lower Appellate Court in paragraph 17 and 21 and dismissed the appeal.

5. Being aggrieved by the said decree, the Defendant Nos.2 to 7 preferred present appeal.

6. The learned counsel for the Appellant Defendant Nos.2 to 7 submits that both the courts below failed to consider the document Exhibit- 76 which shows that the HUF property was distributed to the legal heirs on 01/01/1975 and hence, though there are concurrent findings of facts of both the courts below, same are required to be set aside.

7. It is to be noted that admittedly, Defendant Nos.2 to 7 failed to place on record any cogent evidence to show that the said document of partition dated 01/01/1975 Exhibit- 76 was executed with knowledge and consent of the parties. Both the courts below categorically held that same was executed behind the back of the Plaintiff and hence, same was not binding on her.

8. It is to be noted that the Apex Court in the matter of ***Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95*** held that if there are concurrent findings of facts of both the courts below and no question of law is involved in the appeal, then there is no question of entertaining the appeal.

9. Considering the submissions made by the learned counsel for the Appellant and as there are concurrent findings of facts recorded by both the courts below on partition deed dated 01/01/1975 Exhibit- 76 and the law laid down by the Apex Court, I do not find any substantial question of law involved in the present appeal. Hence, same stands rejected.

(K. K. TATED, J.)