

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.804 OF 2005

(Shamsher Abdul Rahiman Bhilawade Vs. Smt. Hijabi Babasaheb Bhilawade and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri P.D. Pise, Advocate for Appellant.

Shri Sudesh Patil, Advocate for Respondent No.1.

CORAM: R.K. DESHPANDE, J.

DATE: 10th AUGUST, 2015.

The question as to whether the properties included in Schedule-A are jointly held by the parties has been answered by the Courts below concurrently holding that the properties are the self-acquired property of the respondent No.1. Similar is the finding recorded in another Regular Civil Suit No.156 of 1982 filed by the respondent No.1 for possession of the properties included in Schedule-A.

Regular Civil Appeal No.195 of 1999 was filed challenging the findings recorded by the Trial Court and the appeal was dismissed and hence Second Appeal No.812 of 2005 has been preferred.

The decree for possession has been passed in Regular Civil Suit No.156 of 1982 recording the finding of fact that the Schedule-A properties are the self-acquired properties of the respondent No.1. The findings are based upon evidence and no substantial

question of law arises for consideration. Hence, Second Appeal No.812 of 2005 is dismissed.

So far as Second Appeal No.804 of 2005 is concerned once it is held that Schedule-A are the self-acquired property of the respondent No.1 and this finding is confirmed by dismissing the Second Appeal No.812 of 2005, the question of reconsideration of such issue in Second Appeal No.804 of 2005 does not at all arise and no substantial question of law arises for consideration.

So far as Schedule-B properties are concerned both the Courts below have held that those are the ancestral property. The partition is denied on the ground that certain other properties jointly held by the parties are not included in the suit for partition. *Prima facie* the principle is applicable to Hindu Law and not to the Mohammedan Law, wherein the parties are tenants in common. *Prima facie* therefore, the only question which arises for consideration of this Court in the Second Appeal is as under:

Whether the Courts below have committed an error of law in holding that the properties included in the Schedule-B cannot be partitioned, for the reason that the other properties jointly held by the parties are not included in the suit for partition?

The learned counsel appearing for the respondent No.1 waives service of notice.

There is no question of interim relief. The learned counsel for the appellant to pay costs of Rs.5000/- for not having prepared the matter, in spite of several opportunities. The costs be paid within a period of one week from today to Kirtikar Law Library.

Civil Application (CAS) No.383/2015:

For the reasons stated in the application, I am satisfied that sufficient cause is made out for condonation of delay and the case is made out for restoration. Hence, the application is allowed. Second Appeal is restored after condoning the delay.

Civil Application (CAS) No.384/2015:

Issue notice to the proposed legal representatives of respondent No.16(1), returnable after eight weeks.

Service by RPAD in addition to regular mode, is allowed.

Civil Application (CAS) No.401/2015:

For the reasons stated in the application, the application is allowed. The delay caused is condoned. Second Appeal is restored.

In view of the fact that the Second Appeal

No.812 of 2005 has been dismissed. The Civil
Application No.402 of 2015 does not survive.

JUDGE

NSN