

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.305 OF 2014

(Dhanraj s/o Tukaram Zade ..vs.. Anjanabai w/o Shamraoji Bhoyar and another)

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 26-10-2015

Heard Shri A.N. Dangore, learned Advocate for the appellant and Shri S.D. Chande, learned Advocate for the respondents.

2. The respondent No.1(original plaintiff) filed the civil suit praying for decree for partition of the ancestral properties. The subordinate Courts have concurrently upheld the claim of the plaintiff and has granted decree for partition and separate possession for 1/3rd share in the suit properties.

3. The appellant (brother of the respondents) has challenged the judgment and decree passed by the subordinate Courts, relying on the provisions of Section 6 of the Hindu Succession Act, 1956. The subordinate Courts have dealt with the issue. The learned District Judge, relying on the judgment given by the Hon'ble Supreme Court in the case of ***Ganduri Koteswaramma and another vs. Chakiri Yanadi and another*** reported in ***2012(1) Mh.L.J. 613***, has rejected the challenge

raised on behalf of the appellant. The findings recorded by the learned District Judge on this aspect are in consonance with the judgment given in the case of ***Ganduri Koteshwaramma and another*** and by the Full Bench Judgment of this Court in the case of ***Badrinarayan Shankar Bhandari and others vs. Omprakash Shankar Bhandari*** reported in ***2014(5) Mh.L.J. 434***.

4. The learned Advocate for the appellant has further submitted that there was partition in which the appellant, the respondent No.1 and the respondent No.2 were given their separate shares. It is the submission that the respondent No.1/plaintiff was given field Survey No.238 in that partition and the respondent No.1/plaintiff sold field Survey No.238 on 17-04-1986 to Shri Anandrao Wanve. The submission runs counter to the pleadings of the appellant before the trial Court. In paragraph No.11 of the written statement filed by the appellant, it is stated that there was an oral partition of ancestral properties, after the death of mother of the appellant and the respondents. It is undisputed that the mother of the appellant and the respondents died in 2002. In these facts, the submissions made on behalf of the appellant that there was a partition sometime in 1985-86 pursuant to which the appellant, the respondent No.1 and the respondent No.2 were put in possession of their respective shares, cannot be accepted. The

subordinate Courts have properly appreciated the evidence on the record. The appellant has not been able to point out any perversity in the appreciation of the evidence by the subordinate Courts.

5. The appeal does not raise any substantial question of law which is required to be considered under Section 100 of the Code of Civil Procedure. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

Civil Application No.700 of 2014.

In view of the dismissal of the appeal, the application praying for interim order is rendered infructuous. It is disposed accordingly.

JUDGE