

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 299 OF 2006

Laxman s/o Kashinath Mangdare **APPELLANT**

V E R S U S

Rama s/o Kashinath Mangdare
– died Thr. L.Rs. & Ors. **RESPONDENTS**

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Mr. S.D.Hiwrekar, Advocate for Appellant.

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CORAM : T.V.NALAWADE, J.

DATE : 6th APRIL, 2016

ORAL ORDER :-

. The Appeal is filed against the Judgment and Decree of R.C.S. No. 68/1976 which was pending in the Court of the Civil Judge [Jr. Division], Ambad, district Jalna and also against the Judgment and Decree of R.C.A. No. 238/1981 which was pending in the Court of the Additional District Judge, Jalna. The Suit was filed by the appellant for relief of injunction and separate possession of agricultural land and it is dismissed by the Courts below.

2. The Suit was filed in respect of S.No. 48 which is known as 'Belacha Mala' situated in village

Ravna, Tahsil Ambad. It is the case of plaintiff that the suit property is ancestral property of plaintiff and defendant and they were jointly cultivating the suit property till the year 1973. It is contended that as in the year 1976 the defendant stopped giving share to the plaintiff in the crop, cause of action took place. The plaintiff has contended that he has equal share in the suit property with the defendant who is real brother of the plaintiff.

3. The defendant contested the Suit by contending that the suit property was not ancestral property of plaintiff and defendant. It is contended that the suit property was separate property of brother of grand father of defendant and he had given the property to the defendant many years back. He contended that from prior to 1954 – 1955, the defendant has been in possession as owner and the plaintiff has no concern with the suit property.

4. The issues were framed on the basis of the aforesaid pleadings. In support of the contention there was only oral evidence of the plaintiff. The defendant produced the revenue record which is of 1357 Fasli. This record of Khasra Pahani and subsequent revenue record show that the suit property was owned by Tulaji. Admittedly, Tulaji was brother of grand-father of the plaintiff and defendant. From Tulaji, property came directly to the defendant. This record is consistent with the case of the defendant. Thus, the property was

entered in the name of the defendant as owner more than 30 years prior to the date of filing of the Suit and he was shown in possession of the property also. In the present proceeding also, learned counsel for the plaintiff tried to show some record but that record was in respect of other survey number and not the present suit property. Thus, the plaintiff failed to prove that the property was entered in the name of the defendant as a successor of the common ancestor of the plaintiff and defendant. There is virtually nothing with the plaintiff to show that he was in possession or joint possession of the suit property along with the defendant. The Suit was filed for relief of partition and for that it was necessary for the plaintiff to show that the property is ancestral and joint family property of plaintiff and defendant. As there is no such evidence, both the Courts below have held that the plaintiff is not entitled to any relief. These are the findings on facts and no substantial question of law as such is involved in the present Appeal.

5. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]