

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 128 OF 2016
WITH
CIVIL APPLICATION NO. 1978 OF 2016

Mohan Jagannath Pande

....Appellant.

Versus

Asha Ashok Tiwari & Anr.

....Respondents.

Mr. S.S. Chapalgaonkar, Advocate for appellant.

Mr. Amol Joshi h/f. Mr. S.S. Kulkarni, Advocate for respondent Nos.
1 and 2.

CORAM : T.V. NALAWADE, J.
DATED : 30th June, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 31/2010, which was pending in the Court of Civil Judge, Senior Division, Kopargaon and also to challenge the judgment and decree of Regular Civil Appeal No. 94/2013, which was pending in the Court of District Judge-2, Kopargaon, District Ahmednagar. Heard both the sides.

2. It is the case of respondent Sou. Asha, original plaintiff that one Jagannath was father of plaintiff and defendant Nos. 1 and 2. Defendant No. 1 is brother of plaintiff and

defendant No. 2 is sister of plaintiff. Their mother is also dead. It is the case of plaintiff that suit property described in plant para No. 1B was allotted to his father by the State Government of Maharashtra as he was ex-serviceman. It is her case that the other suit property was also self acquired property of Jagannath. It is her case that as successor of Jagannath, plaintiff and defendants are entitled to get 1/3rd share, each, in the suit property. It is contended that defendant No. 1 is refusing to partition the property and so, cause of action took place. The suit was filed in the year 2010.

3. Defendant No. 1 filed written statement and he denied that plaintiff has share in the suit property. He contended that plaintiff was given in marriage about 35 years prior to the date of suit and since then, he has been in possession of the suit property and he alone is enjoying the property. He contended that he has become owner due to adverse possession.

4. Admittedly, one Regular Civil Suit No. 165/2007 was filed by defendant No. 1 in the past against sisters in which declaration was claimed that he is absolute owner of the suit property. The said suit was dismissed and after that, the present suit was filed for relief of partition.

5. On the basis of aforesaid pleadings, issues were framed. Both the sides gave evidence. On the basis of city survey record and revenue record, the Courts below have held that the property was owned by father of the parties and the parties are entitled to have equal share in the suit property. The circumstance like the decision of the suit filed by defendant No. 1 in the past against the plaintiff and involvement of same contentions of defendant No. 1 in the said suit is considered by the Courts below.

6. When the property comes from father in the hands of one successor, he holds the property for other successors and his possession is for other successors also. In view of such position of law, it was not possible for defendant No. 1 to prove that he has become owner due to adverse possession. Due to the nature of pleadings and aforesaid circumstances, no other decision was possible. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil application is disposed of.

[T.V. NALAWADE, J.]

ssc/