

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

**Second Appeal No. 140 of 2012
With
Civil Application No.2111 of 2012**

Tarabai Balu Adhav
Died through legal representatives
And Another. **.. Appellants.**

Versus

Ramdas Bhanudas Saykar & Others. **.. Respondents.**

Smt. Sanghmitra Wadmare, Advocate, for appellant No.2.

CORAM: T.V. NALAWADE, J.

DATE : 27 JUNE 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.23/2000 which was pending in the Court of the Civil Judge, Junior Division, Karjat, District Ahmednagar and also against the judgment and decree of Regular Civil Appeal No.59/2008 which was pending in the Court of the District Judge-8, Ahmednagar. The suit filed by the present appellants for relief of partition and separate possession is dismissed and there are concurrent findings. Heard learned counsel for the appellant.

2) Dhondiba was the ancestor of plaintiffs and some of the defendants. Tatya was the son of Dhondiba and plaintiffs and some of the defendants are successors of Tatya. It is the case of the plaintiffs that Gat No.266 and Gat No.305, together admeasuring around 5 hectares and situated at Sonalwadi, Tahsil Karjat, were ancestral properties of Dhondiba. It is contended that as there was dispute between Dhondiba and Tatya and Tatya was asking Dhondiba to partition the suit property, Dhondiba murdered Tatya and Dhondiba was convicted and sentenced for the said offence.

3) It is the case of the plaintiffs that after suffering the sentence when Dhondiba came out he alienated suit properties to defendant Nos.1 and 2 under registered sale deed dated 2-2-1988. It is contended that there was no power with Dhondiba to alienate the share of Tatya and so that sale deed is not binding on the plaintiffs and other successors of Tatya.

4) Defendant Nos.1 and 2 contested the suit by filing written statement. They denied that the suit

properties were ancestral properties of Dhondiba. They contended that the suit properties were purchased by Dhondiba from his self income, they were his self acquired properties. Alternately they contended that they have been in possession of the suit properties continuously for more than 12 years and they have become owners by adverse possession.

5) Other successors of Tatya supported the plaintiffs. Issues were framed on the basis of the aforesaid pleadings. Both the sides gave evidence. Both the Courts below have held that the suit properties were self acquired properties of Dhondiba and so the properties cannot be partitioned.

6) This Court has carefully gone through the reasoning given by the two Courts below. In support of the case, defendants produced copies of mutations under which the properties came to Dhondiba and there are 7/12 extracts also. This record starting right from Exhibit 82 shows that one property was purchased by Dhondiba from one Pandhare and other property had come to Dhondiba from one Hausabai. It is not the case of the

plaintiffs or any other defendants that Hausabai had any relation with Dhondiba. In any case if this property had come to Dhondiba from a female owner, he had become absolute owner of that property also. Learned counsel for the appellant argued on some stray admissions given in the evidence by witness that the property was the ancestral property and it had come to Dhondiba from his ancestors. There is no such record and the documents need to prevail over the oral evidence.

7) It is not the case of the plaintiff that there was any ancestral property and some income was derived from the ancestral property by Dhondiba. Due to absence of such pleadings, it cannot be said that the property was the ancestral and joint family property of Dhondiba and Tatya. The findings are questions of facts and they are concurrent. It is not possible to formulate substantial questions of law in view of the aforesaid circumstances. In the result the appeal stands dismissed. Civil application is disposed of. Interim relief, if any, is vacated.

Sd/-
(T.V. NALAWADE, J.)

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