

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

SECOND APPEAL NO. 75 OF 2011

Bhagwant Parasram Dhat ,
Aged 51 years, occup. Agriculture,
R/o Village Bhojada, Taluka Kopargaon,
District Ahmednagar, through
General Poqwer of Attorney Holder
Shri Vyankat Parasram Dhat,
aged 43 years, occup. and resident
as above

.. Appellant /Original
Plaintiff/Appellant

versus

Dhondiram Karbhari Dhat,
Aged 64 years, occup. Agriculture/
Pensioner, Resident of 402,
Ripna Apartment, Motibag,
Pune 16.

.. Respondent/
Orig. Defendant

—
Mr. Anil H. Kasliwal, Advocate for appellant
Mr. S. P. Chapalgaonkar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 29th November, 2016

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Learned counsel Mr. Kasliwal appearing on behalf of appellant-plaintiff contends that the appellant has sufficiently brought forth by evidence the factum of partition of 1979 and consequently injunction ought to have been issued in his favour as claimed in the suit. He purports to refer to a few transactions and mutation entries bearing no. 706 and 520.

3. While reliance is being placed by Mr. Kasliwal on said evidence, learned counsel Mr. Chapalgaonkar appearing on behalf of the respondent pertinently draws attention to that the case of 1979 partition cannot be relied on as, in the first place, according to him, the plaintiff himself avoided to enter the witness box and secondly, the persons who ought to have been brought before the court as witnesses have not given evidence.

4. He further refers to that both the courts have taken stock of the situation and have properly come to the concurrent conclusion that the plaintiff has not been able to prove partition of 1979 as also his possession over the properties which are claimed to have come to his share in said partition.

5. After hearing learned counsel, it appears that the trial court as well as appellate court have extensively considered the case of the plaintiffs claiming partition of 1979. The trial court in paragraph no. 14 of its judgment has exhaustively considered the issue and has come to a definitive conclusion of failure of plaintiff to establish partition of 1979. So is the case by appellate court while giving finding on point number 2 framed by it upon regular civil appeal by plaintiff and the court has thoroughly considered the same and concurred with the trial court's finding that it cannot be said to have been proved by plaintiff that the suit properties had fallen to his share in the claimed partition of 1979.

6. Perusal of both the judgments and particularly aforesaid portions from the same does not show that the observations and findings thereunder can in any way be said to be not in tune with the record and would tend to be perverse.

7. The apprehension expressed by learned counsel for the appellant-plaintiff of doors may be shut out on him may not be said to be proper having regard to observations of the appellate court in paragraph no. 35 of its judgment.

8. In view of aforesaid, I do not see that this is a second appeal giving rise to any substantial question of law.

9. The second appeal, as such, is not liable to be entertained and stands dismissed.

SUNIL P. DESHMUKH,
JUDGE

pnd