

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

Second Appeal No.1688 of 2004

* Shamrao Rama Tikte,
Age 64 years,
Occupation: Agriculture,
R/o Pathrud, Taluka Bhoom,
District Osmanabad. **.. Appellant.**

Versus

- 1) Rama Ganpati Tikte,
Died through legal representatives.
- 1A) Rukminbai w/o Bhagwan Borade,
Age 64 years,
Occupation: Agriculture,
R/o Pathrud, Taluka Bhoom,
District Osmanabad.
- 1B) Prayagbai w/o Sahebrao Bhogil,
Age 59 years,
Occupation: Agriculture,
R/o Jejala, Taluka Paranda,
District Osmanabad.
- 2) Shevantabai w/o Rama Tikte,
Died, - legal representatives -
defendant Nos.1A, 1B,
plaintiff and respondent
Nos.3 and 4.
- 3) Digambar Rama Tikte,
Died through legal
representatives:
 - 3.1) Shahaji s/o Digambar Tikte,
Age 45 years,
occupation: Agriculture.

- 3.2) Navnath s/o Digambar Tikte,
Age 43 years,
Occupation: Agriculture,
Both R/o Pathrud, Taluka Bhoom,
District Osmanabad.
- 3.3) Mandubai w/o Varshiketu Bhogil,
Age 50 years,
Occupation: Agriculture,
R/o Dandegaon, Post Ambi,
Taluka Bhoom, Dist Osmanabad.
- 3.4) Hukabai w/o Pandurang Sable,
Age 40 years, Occupation: Household,
R/o Tintraj, Post. Ambi,
Taluka Bhoom, District Osmanabad.
- 4) Dadasaheb Rama Tikte,
Age 54 years,
Occupation: Agriculture,
R/o Pathrud, Taluka Bhoom,
District Osmanabad.

.. Respondents.

Smt. M.A. Kulkarni, Advocate, for appellant.

Shri. S.D. Hiwarekar, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 14 JULY 2016

JUDGMENT:

- 1) The appeal is filed against the judgment and decree of Regular Civil Suit No.215/1990 which was pending in the Court of the Civil Judge, Junior Division, Bhoom and also to challenge the judgment and decree of

Regular Civil Appeal No.109/1995 which was pending in the Court of the Ad-hoc Additional District Judge, Osmanabad. The suit filed by the present appellant for the relief of partition and separate possession is dismissed by the trial Court and the finding is confirmed by the first appellate Court. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

The suit was filed for partition of in all 27 agricultural lands situated at village Pathrud, Tahsil Bhoom. The plaintiff and defendant Nos.3 and 4 are real brothers inter se and defendant Nos.1 and 2 were their parents. The parents died during pendency of the suit.

3) It is the case of the plaintiff that the defendant No.1, father was Karta of the Hindu joint family of plaintiff and defendants and the suit properties are ancestral and joint family properties of the plaintiff and defendants. The plaintiff had contended that he has 7/25th share in the properties and he had prayed for partition and separate possession of this share.

4) Defendant Nos.1,2 and 4 filed joint written statement. They admitted relationship. They contended that defendant No.1 Rama was Karta of the family and he had partitioned the property of the joint family amongst the plaintiff and the defendants and document was prepared in that regard on 20-5-1984. They contended that possession was given to the respective parties of the share which had fallen to the share of that party. In the written statement the shares which were given to the plaintiff, defendant No.1 and defendant No.3 and 4 were mentioned.

5) In the written statement six lands were shown to be kept with defendant No.1 and it was contended that those lands were self acquired property of defendant No.1. After death of defendant No.1, legal representatives, his daughters also filed written statement, which was similar in nature. They had contended that they are entitled to get share in the property of their father and they had prayed for separation of their share.

6) Issues were framed on the basis of the aforesaid pleadings. Both sides gave evidence. The trial Court held that the defendants have proved that the partition was effected by the father and so suit cannot be decreed. The first appellate Court has confirmed those findings by holding that the so called document of partition was only memorandum of partition and the partition was made by father of the parties and so the partition is binding on the parties. The first appellate Court further held that it was not the case of the plaintiff that partition effected by the father was not equitable and as the said partition was not challenged, it was not possible to decree the suit filed for partition.

7) This Court, other Hon'ble Judge, admitted the appeal on 18-11-2008 by formulating following substantial question of law :-

"(i) Whether the lower appellate Court failed to appreciate that alleged partition deed dated 28th May, 1984 is not registered document and its registration is compulsory under section 17 of the Indian Registration Act and as such it cannot be exhibited and is not at all admissible in evidence ?"

8) The disputed document is given exhibit by the trial Court as the party who executed the document has admitted the execution. Exhibit 100 shows that the father had already distributed the ancestral and joint family property amongst his three sons and he prepared the document as there was quarrel and the names of his sons were not entered in the revenue record separately. The land which was kept for himself was to be partitioned amongst the three sons after the death of defendant No.1 as per this document. There is specific mention in Exhibit 100 that oral partition was already effected and everybody was separately in possession of respective share. In view of these contents of Exhibit 100, the first appellate Court has held that the document is memorandum of partition and not the partition deed. There is concurrent finding on this point of the Courts below.

9) The plaintiff did not step in witness box and his son Bharat gave evidence as power of attorney. In the plaint there was no whisper about the aforesaid partition and in the substantive evidence given in the examination in chief also no reference is made about the partition

which was allegedly effected and which was mentioned in the written statement. In the cross examination he has admitted that the house properties which are mentioned in the suit are also partitioned and that partition took place orally. He has admitted that the properties which were purchased in the names of plaintiff and defendant No.3 are not included in the plaint. There is mention of such properties in Exhibit 100 and the father has mentioned that these were also the joint Hindu family properties as they were purchased from income of ancestral property. The suit could have been dismissed for the reason of non inclusion of those properties in the suit. In the revenue record name of only defendant No.1, father, was entered both in ownership and cultivation column on the date of the suit but he has specifically contended that he had effected partition and Exhibit 100 is the memorandum of partition. The memorandum was prepared in the year 1984 when the suit was filed in the year 1990. In other rights column of one 7/12 extract entries were made of the shares of the sons of defendant No.1 and that can be seen from Exhibit 9.

10) The evidence given by the defendant No.4, Dadasaheb is consistent with the pleadings in the written statement. Suggestion that Exhibit 100 is forged document is denied by him. The scribe of Exhibit 100, Shankar Patil is examined by the defendants. One witness Audumbar is examined as has signed on Exhibit 100. In view of these circumstances burden was heavy on the plaintiff to show that partition had not taken place. As the document at Exhibit 100 was only memorandum of partition and the partition was already effected orally, there was no need of registration of this document. Such finding is given by the District Court. In view of such finding, this Court holds that there was no problem in reading the contents of the document in evidence for every purpose. This document could have been used for collateral purpose also to ascertain the status of the parties whether they were joint or separate even if this document was treated as partition deed.

11) Learned counsel for the appellant placed reliance on a case reported as **AIR 1966 SC 1836 (Maturi Pullaiah v. Maturi Narasimham)**. The facts of the reported

case were altogether different. In that case, after death of father one document was prepared as family arrangement. Learned counsel for the appellant submitted that Exhibit 100 was not signed by the three sons of defendant No.1 and so that document cannot be given any weightage. This submission is not acceptable as Hindu father of joint family has special power and he can effect partition amongst members of the joint Hindu family. So the point is answered against the appellant. The appeal is dismissed.

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

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