

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

908 SECOND APPEAL NO. 312 OF 2016
WITH CA/5577/2016 IN SA/312/2016

KASHINATH DNYANOBA GOCHADE
VERSUS
BALASAHEB DNYANOBA GOCHADE

...
Advocate for Appellant : A.G. Dalal h/f. Salunke Sudarshan J
...

CORAM : T.V. NALAWADE, J.
DATED : 27th April, 2016.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Appeal No. 61/2006, which was pending in the Court of District Judge-4, Ambajogai, District Beed. The First Appellate Court has allowed the appeal and for giving decree of partition, the judgment and decree of Trial Court given in R.C.S. No. 8/2002 by Civil Judge, Junior Division, Ambajogai is set aside. Heard the learned counsel for appellant.

2. Plaintiff and defendant are real brothers *inter-se*. Regular Civil Suit No. 8/2002 was filed for relief of partition and separate possession of share of plaintiff in two house properties bearing Nos. 485 and 511 situated at village Chanai. It is the case of plaintiff that the partition of agricultural lands between plaintiff and defendant was effected already, but no partition

was effected in respect of house properties. He has contended that after the death of father, name of only defendant was entered in the assessment record of the two houses, but this name was entered for Joint Hindu Family of plaintiff and defendant. Half share was claimed by the plaintiff in the two house properties.

3. Defendant admitted that two house properties were owned by his father. He contended that there is one more house property i.e. 510 situated in the same village and it is also Joint Hindu Family property. He contended that house No. 510 was purchased by plaintiff on 8.11.1994, but the consideration was given from the income of Joint Hindu Family properties, the ancestral properties. It is contended that when agricultural lands were partitioned, some more portion, 20 R. portion, was given to the share of plaintiff and by using the income of that portion, house No. 510 was purchased by plaintiff and so, it is Joint Hindu Family property.

4. Issues were framed on the basis of aforesaid pleadings. Without giving any convincing reason, the Trial Court dismissed the suit. It is not disputed that the agricultural lands were partitioned and one document of partition was also

prepared on 17.1.1989. In view of this circumstance, there was no question of getting income from Joint Hindu Family property by the plaintiff. Thus, there was no question of consideration of the case that house No. 510 was purchased by plaintiff from the income of Joint Hindu Family property and that property was not included in the suit. On the other hand, defendant did not come with specific case that the two suit properties were his self acquired properties. He admits that after the death of father, his name was entered in the assessment record of the two houses.

5. It appears that first time in the appeal filed in District Court, it was submitted for defendant during argument that mother and sister of the parties are entitled to have share in the properties and as they are not made parties, the suit is bad for non-joinder of necessary parties. It appears that on the basis of record and submissions, the District Court has held that in the past, when agricultural lands were partitioned and the partition which is accepted by defendant, no share was shown to be given to mother and sister. It is further observed that there was no such specific pleading in written statement and so, such oral contention in appeal cannot be considered. Further, it can be said that the present decree will not be binding on mother and sister of the parties.

6. When the property is purchased after partition by a member of previous Joint Hindu Family, the other party, who wants to prove that it is Joint Hindu Family property needs to prove such contention and burden of proof is on such party. Admittedly, only the agricultural lands were giving income and they were partitioned prior to the date of purchase of house No. 510. Thus, it cannot be said that the suit was bad for not adding property No. 510 in the suit. Thus, the finding given by the District Court is mostly on admitted facts and aforesaid circumstances. It is a finding of question of fact. No substantial question of law as such is involved in the matter.

7. In the result, appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/