

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

SECOND APPEAL NO. 105 OF 2016

Dnyandeo Sitaram Misal APPELLANT

V E R S U S

Govindrao Devrao Chaure
& Ors. RESPONDENTS

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Mr. Milind Patil, Advocate for Appellant.

Mr. A.R.Vaidya, Advocate for R.No. 1.

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CORAM : T.V.NALAWADE, J.

DATE : 7th APRIL, 2016

ORAL ORDER :-

. The Appeal is filed against the Judgment and Decree of R.C.A. No. 29/2011 which was pending in the Court of the District Judge - 1, Beed. The Appeal filed by present respondent No. 1/plaintiff Govindrao is allowed by the District Court and the Suit filed for partition and separate possession is decided in his favour. The Trial Court had dismissed the Suit, but the said decision is set aside by the District Court. Both sides are heard.

2. R.C.S. No. 389/2008 was filed by present respondent No. 1/plaintiff Govindrao in respect of ½

portion of agricultural land bearing G.No. 68 situated at Ghosapuri, Tahsil and district Beed. This land was previously owned by 2 brothers viz. Gowardhan and Sakharam [defendant No. 3]. Defendant Nos. 4 to 6 are successors of Gowardhan. It is the case of plaintiff that G.No. 68 was partitioned between Gowardhan and Sakharam and during partition, 4 strips of land were created and each brother got 2 strips. Hand sketch map of the strip was given along with the plaint.

3. It is the case of plaintiffs that he and defendant No. 2 purchased the share of Sakharam under 2 different sale deeds on 24/08/1987. It is contended that after the sale transaction, plaintiff and defendant No. 2 started enjoying the property jointly. It is contended that subsequently defendant No. 2 created some false record to show that there was partition between plaintiff and defendant No. 2 and particular portion of 1 H. 19 R. was owned and possessed by defendant No. 2. This portion is shown to be sold by defendant No. 2 to defendant No. 1. It is contended that defendant No. 1 is claiming ownership of this particular portion shown to be sold to him in the sale deed and so the cause of action has arisen for the Suit.

4. Defendant Nos. 1 and 2 appeared in the Suit but they did not file Written Statement. Defendant Nos. 3 to 6 did not appear in the Suit and ex-parte order was made against them. The Trial Court held that the plaintiff failed to prove that there was partition between

Gowardhan and Sakharam and on this ground the Suit was dismissed. The first Appellate Court has considered the material and has held that the Suit ought to have been decreed by the Trial Court.

5. This court has carefully gone through the reasonings given and the rival pleadings. There are following important circumstances.

- [i] Gowardhan and Sakharam [defendant No. 3] had equal shares in land G.No. 68.
- [ii] In the plaint map, separate shares of these two brothers were shown by plaintiff and it was contended that partition had taken place between Gowardhan and Sakharam.
- [iii] The successors of Gowardhan were party to the Suit and even Sakharam was party to the Suit, but they did not appear in the Suit to contest the Suit and so it needs to be presumed that they were admitting that partition had taken place between them, as contended in the plaint.
- [iv] Sakharam [defendant No. 3] and Gowardhan's successors were not disputing partition and so on the basis of the map it could have been held that there was partition and Sakharam had sold 2 strips which had

come to his share to plaintiff and defendant No. 2.

[v] In the sale deeds executed by Sakharam in favour of plaintiff and defendant No. 2, the entire share of Sakharam from G.No. 68 was shown to be sold and no separate portion was shown in the 2 sale deeds. In view of these circumstances, there was no alternative but to hold that plaintiff and defendant No. 2 had purchased entire share of Sakharam and so they have $\frac{1}{2}$ share in the share of Sakharam.

[vi] In view of the description of the property shown to be sold to the plaintiff and defendant No. 2, there was no option before them than to partition the share of Sakharam between them. As there was no record of partition of this share between the plaintiff and defendant No. 2, the Trial Court ought to have given decree of partition. On the basis of the sale deed executed by defendant No. 2 in favour of defendant No. 1, it could not have been presumed that there was partition between the plaintiff and defendant No. 2.

6. In the present proceeding also, liberty was

given to the appellant, the purchaser, the defendant to show that partition had taken place between the plaintiff and defendant No. 2. No such record is available. Thus, the decision given by the first Appellate Court is on the basis of the aforesaid material and it is the finding on question of fact. No substantial question of law as such is involved in the matter.

7. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 1637 of 2016 does not survive and stands disposed of.

8. The learned counsel for the appellant submitted that interim relief granted by this Court that actual partition is not be effected, be continued for further period. There is virtually no case to the present appellant and so there is no question of continuation of relief. Said request is rejected. The amount, if any, deposited at the time of deciding the application filed for condonation of delay is to be credited to the High Court Legal Services Authority.

[T.V.NALAWADE, J.]