

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.665 OF 2014
WITH
CIVIL APPLICATION NO.1566 OF 2014
IN
SECOND APPEAL NO.665 OF 2014**

Nagnath Ganapati Chavan (Since dead
through his legal heirs Sundrabai Nagnath
Chavan & Ors.)

..Appellants

Vs.

Amrutlal Ratnachand Pitle & Ors.

..Respondents

....

Mr. Samir Kumbhakoni for the appellants.

Mr. Ramdas Sabban for the respondents.

....

CORAM : N.M. JAMDAR, J.

DATED : 22 MARCH 2016

P.C.:

. By this appeal, the appellant challenges the judgment and order dated 10 December 2013 passed by the learned District Judge, Solapur dismissing the Regular Civil Appeal No.149/2008 against the judgment and decree dated 25 April 2008 passed by the Civil Judge, Junior Division, Barshi in Final Decree Application No.1/1996.

2. Respondent/Original Plaintiff filed a Regular Suit No.228/1978 which was decreed and the plaintiff was declared as

entitled to 2/3rd share in the property described in paragraphs 2 and 3 of the plaint. Thereafter both the appellant and the respondents filed respective appeals in the District Court, Solapur. The District Court, Solapur disposed of the appeals and partly decreed the suit and in the operative portion stated that respondent No.1-plaintiff will be entitled to 2/3rd share in respect of properties mentioned in paragraph Nos.1 to 3 of the plaint. Second Appeal filed by the plaintiff bearing No.151/1992 was dismissed. Proceedings came up before the learned Civil Judge, Solapur for drawing a final decree. Appellant took a stand that the properties mentioned in paragraph Nos.1 to 3 be also partitioned. The learned Civil Judge did not accept the contention of the appellant and passed a final decree in respect of paragraphs 2 and 3 of the plaint. Regular Civil Appeal No.149/2008 was dismissed by the learned District Judge, Solapur. Hence the Second Appeal.

3. Heard learned counsel for the parties.

4. Learned counsel for the appellant submitted that the final decree is not in consonance with the decree passed by the Appellate Court on 21 December 1990 which is confirmed by this Court by dismissing the appeal. There is no decision rendered on 21 December 1990 by the District Court that property at paragraph 1 be also included and it appears to be by way of an error. In the plaint, the relief is sought only in respect of properties mentioned in paragraph 2 and 3 and that the appellant had purchased the

property described in paragraph 2 of the plaint and, therefore, he could not seek share in the property described in paragraph 1. The learned counsel for the appellant then submitted that the property at paragraph 2 and 3 are included in paragraph No.1. However there is no such discussion or finding given by the learned District Judge while disposing of the appeal on 21 December 1990 whether the properties in paragraph 2 and 3 are part of property in paragraph 1 is a factual finding. No such factual finding is recorded.

5. In the circumstances, no question of law arises. Second appeal is accordingly dismissed. In view of dismissal of second appeal, Civil Application does not survive and is disposed of.

(N.M. JAMDAR, J.)