

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 206 OF 2012

Shri Ganpati Satyappa Ambi
since deceased through his legal
Representatives-
Shri Sambhaji Ganpati Ambi & ors. .. Appellants

Versus.

Babu Satyappa Ambi
since deceased through heirs -
Dattatray Babu Ambi & ors. .. Respondents

Mr.S.G.Deshmukh a/w Mr.Ramdas Shelke, for Appellant.
Mr.Chetan Patil, for Respondent Nos.2 & 3.

**CORAM: N.M. JAMDAR, J.
Wednesday, 30 March 2016.**

Oral order :

By this Appeal, the Appellants who are the original Plaintiffs challenge the dismissal of their suit by the Civil Judge Junior Division, Miraj by order dated 29 August 2002 and dismissal of the Appeal by the learned Principal District Judge, Sangli by order dated 9 July 2010.

2. The suit was filed by the Appellants in respect of property bearing C.T.S No.6078/C admeasuring 381 sq.mtrs. situated at Miraj, district Sangli. It was the case of the Appellants that the said property was kept joint even though partition took place on 9

July 1951. It was the case of the Respondents that the property was partitioned by way of an oral partition which took place in the year 1951 and it came to the share of the Respondents.

3. The Appellants had relied upon a document dated 9 July 1951 in which it is mentioned that suit property is kept in common. Both the Courts however have not relied upon this document in absence of its registration. The learned counsel for the Appellants submitted that the document need not be registered as it only records a historical fact of partition and it is not that by this deed partition took place. This submission cannot be accepted. If the case of the Appellants in the pleadings and evidence is taken into consideration it is clearly asserted by the Appellants that it is by way of this deed that the partition took place. The deed dated 9 July 1951 is placed on record. The title of the deed is, partition deed. The deed records that it is by this deed that the shares are being determined. In view of the settled position of law that a deed which creates rights such as these has to be registered, no error was committed by both the Courts in coming to the conclusion that the deed cannot be looked into for want of registration.

4. The learned counsel for the Appellant then submitted that the parties had made an application to the revenue authorities for entering their names pursuant to the deed and therefore, it clearly shows that the deed was acted upon and also the fact that the parties have admitted their signature on the deed of 1951. Though

the application was made for entering the name in the revenue records, the names of only the Respondents were entered into in the revenue record and therefore, the entries did not take place as per the Deed. The entries in the revenue record continued for period of almost 40 years and the suit was filed in the year 1997. Though the entries will not confer any title on the Respondents their existence without it being questioned by the Appellants for 40 years supports the theory of Respondents of oral partition and the property coming to their share.

5. In addition the Respondents had filed the civil suit bearing Regular Civil Suit No.281 of 1993 against the son of the Appellants for injunction in respect of the property and in the Written Statement, son of the Appellants nowhere stated that the suit property was kept joint under the partition deed. This suit for injunction was decreed.

6. In the circumstances, if the deed of 1951 is kept aside, the conclusion reached by both the Courts that there was no evidence to show that the property was kept joint, cannot be faulted with. There is no perversity in the appreciation of evidence. No substantial question of law arises. The Appeal is dismissed.

(*N.M. JAMDAR, J.*)