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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.141 OF 2016
WITH
CIVIL APPLICATION NO.221 OF 2016

Bhima N. Shendge & Ors.	...Appellants
V/s.	
Kusum D. Shendge	...Respondent

Mr.Bhooshan R. Mandlik i/b Mr.S.S. Patwardhan for the Appellants.

None for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 12TH FEBRUARY, 2016.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908 the appellants (original defendants) have impugned the judgment dated 1st August, 2015 passed by the lower appellate Court, dismissing the appeal filed by the appellants and partly modifying the decree passed by the learned trial Judge.

2. There is no dispute that the suit property was an ancestral property, in which Dattatraya Shendge had a right. There is no dispute about the marriage of the plaintiff no.1 with the said Dattatraya Shendge. The original plaintiffs have filed a suit *inter-alia* praying for permanent injunction and partition of the suit property and

claiming the share through Dattatraya Shendge, who was the son of Nagnath.

3. Learned counsel appearing for the appellants invited my attention to the reasons recorded by the learned trial Judge. He submits that merely because there was an entry recorded in the record of the Grampanchayat, the same could not have been a conclusive proof of the marriage of the plaintiff no.1 with the said Dattatraya Shendge. He submits that since the marriage of the plaintiff no.1 with Dattatraya Shendge was not proved, the plaintiff no.1 along with other plaintiffs could not have claimed any share in the property of Dattatraya Shendge.

4. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has dealt with this issue at great length in paragraphs 4 and 5 of the impugned order. The plaintiffs had examined various witnesses, including the witness from the office of Grampanchayat. The said witness produced relevant document to show that the entry of the marriage of the plaintiff no.1 with the said Dattatraya Shendge was recorded in the record of the Grampanchayat. The learned trial Judge accordingly rejected the submission of the defendants that there was no marriage between the plaintiff no.1 and the said Dattatraya Shendge.

5. The lower appellate Court has also independently

appreciated the oral evidence as well as documentary evidence led by the parties. It is held by the lower appellate Court that even if the marriage was not registered, the entry in the record of the Grampanchayat could not have been overlooked. It is held that even otherwise independently the plaintiffs have proved by leading oral evidence that plaintiff no.1 was legally wedded wife of the said Dattatraya Shendge and was accordingly entitled to the share in the property of the said Dattatraya Shendge.

6. In my view, the findings recorded by the learned trial Judge as well as the lower appellate Court are based on oral evidence as well as documentary evidence led by the parties and are concurrent findings which are not perverse and thus no interference with the impugned order is permissible under section 100 of the Code of the Civil Procedure, 1908.

7. In my view, the appeal is devoid of merits and is accordingly dismissed.

8. In view of the disposal of the second appeal, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)