

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

***SECOND APPEAL NO. 584 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 916 OF 2016***

Laxman Mahadu More,
R/at Near Mahatma Gandhi Idol,
New Kopare, Tal. Haveli, Dist.Pune.

... Appellant/
Applicant

v/s

Narendra Ramchandra More,
R/at Near Mahatma Gandhi Idol,
New Kopare, Tal. Haveli, Dist.Pune.
& ors.

... Respondents

***AND
SECOND APPEAL NO. 349 OF 2015***

Laxman Mahadu More,
R/at Near Mahatma Gandhi Idol,
New Kopare, Tal. Haveli, Dist.Pune.

... Appellant

v/s

Smt.Yamunabai Sopan Ranpise & ors.

... Respondents

Mr.Avinash Avhad for the appellant in both the appeals and applicant
in CAS No.916 of 2016.

Mr.A.V.Anturkar, senior advocate i/by S.B.Deshmukh for Resp. Nos.3
to 5 in both appeals.

Mr.Tejas Dande along with Bharat Gadavi i/by Tejas Dande &

Associates for Resp. No.8 in S.A.No.584 of 2015 and Resp. No.1 in S.A.No.349 of 2015.

Coram: N.M. Jamdar, J.

Dated: 4 July 2016

ORAL ORDER:

These two appeals are between the same family members relating to the same subject matter and have been argued together and are being disposed of by this common order.

2 Second Appeal No.349 of 2015 challenges the judgment and orders passed by the Civil Judge, Senior Division, Pune in Regular Civil Suit No.438 of 1999 and learned District Court, Pune, in Regular Civil Appeal No.385 of 2006. Second Appeal No.584 of 2005 challenges the judgment and orders passed by the Civil Judge, Senior Division, Pune, in Regular Civil Suit No.737 of 2002 and Regular Civil Appeal No.386 of 2006.

3 The original Plaintiffs in these two appeals are sisters. They filed respective suits claiming partition and share in the suit property. The suit was resisted by the Appellants, the brothers, on the ground that the partition took place on 27 July 1974 and both the Plaintiffs had relinquished their shares and thereafter the parties are living separately. The learned Civil Judge decreed the suit and granted 1/24

share to the Appellant and the Respondent. The first appeals filed in the District Court by the Appellant were dismissed.

4 Learned counsel for the Appellant submitted that the suits which have been instituted in the year 2006 are barred by limitation as the suit ought to have been filed within 12 years of 27 July 1974 or at least within 12 years from the mutation entry. This submission cannot be accepted. Both the Courts have considered as to whether there was in fact a deed of partition as contended by the Appellant and whether the Respondents/Plaintiffs relinquished their share. The original partition deed is not placed on record. Photocopy was placed on record. The learned Civil Judge examined these documents in detail and found that there was no signature as to who purchased the stamp paper. There was no endorsement of Respondents/Plaintiffs having relinquished their shares. The cross-examination of the witnesses have been analyzed by the learned Civil Judge to conclude that the copy of the partition deed as well as the factum of partition was not reliable. Nothing is shown as to how this finding is perverse. The relinquishment is also stated to be oral. Thus, once the factum of partition and relinquishment is not proved, then, the joint family property will have to be partitioned. There is no dispute that the properties are joint family properties, neither there is any dispute regarding relationship. Once the Respondents/Plaintiffs have right in the properties, it cannot be lost sight by mere mutation entries.

5 Learned counsel for the Appellants then sought to urge that the wife of deceased Mahadu i.e. their mother's share ought to have been considered. However, no such submission is made before the Courts below neither it appears in the memo of appeal before the District Court. No other contentions were advanced. It is not possible to interfere with the findings of fact. No substantial question of law arises.

6 The second appeals are dismissed. Civil Application No.916 of 2016 is disposed of.

(N. M. Jamdar, J.)