

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***  
**SECOND APPEAL NO. 210 OF 2014**

**Dnyaneshwar Keru Chondhe**

**..... Appellant**

**VERSUS**

**Smt.Shalini Tukaram Chondhe & Ors.**

**..... Respondents**

Mr.A.V.Anturkar, Senior Advocate, i/b. Mr.S.B.Deshmukh and Mr.Rushikesh Barge for the Appellant.

Mr.V.S.Gokhale for the Respondents.

**CORAM : R.D. DHANUKA, J.**

**DATE : 29<sup>th</sup> AUGUST, 2016**

**P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant has impugned the order and judgment dated 21<sup>st</sup> January, 2014 passed by the learned District Judge dismissing the appeal filed by the appellant. The appellant had impugned the judgment and decree dated 4<sup>th</sup> May, 2009 passed by the 3<sup>rd</sup> Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune decreeing the suit filed by the respondents which suit was for partition and separate possession of the suit land to the extent of their ½ share of the appellant (original defendant).

2. It was the case of the original plaintiffs that the suit land bearing S.No.7, Hissa No.1 having area admeasuring 80 H.R was owned and possessed by Tukaram Bapu Choundhe, Rambhau Bhiva Choundhe and four others. They were all cousins. In the 7/12 extract of the suit land, the name of the deceased Tukaram Bapu Choundhe was recorded. It was the case of the plaintiffs that it was a ancestral and joint family property. They had however made partition on 7<sup>th</sup>

September, 1981 and had recorded the partition vide ME No.3800. The other parties had filed a suit against Rambhau Tukaram Choundhe and others before the learned Civil Judge, Senior Division, Pune (RCS No.177 of 1999). The said suit was compromised on 21<sup>st</sup> September, 2000. It was the case of the plaintiffs that the said Dyaneshwar Keru Choundhe and Tukaram Keru Choundhe had thus  $\frac{1}{2}$  share in the suit land. The said Tukaram Keru Choundhe died on 2<sup>nd</sup> January, 2001 leaving behind him the plaintiff nos. 1 to 4 as his legal heirs. Though their names were recorded in the 7x12 extract to the extent of  $\frac{1}{2}$  share as the owners, the concerned authority in RCS appeal had set aside the said entry.

3. The suit was resisted by the defendants (the appellants herein) by filing the written statement. The defendants however did not dispute that Keru Sayaji Chondhe was his father. The defendants also did not dispute that Tukaram was his brother and that his father Keru Sayaji Chondhe died on 1<sup>st</sup> September, 1990 leaving behind him two sons Dnyaneshwar Keru Chondhe and Tukaram Keru Chondhe.

4. The learned trial judge framed six issues and has after considering the oral and documentary evidence rendered a finding that the plaintiffs had proved that the suit property was a joint family property of the deceased Tukaram Keru Chondhe and Dnyaneshwar Keru Chondhe and that the plaintiff had proved that they had  $\frac{1}{2}$  share in the suit property. The defendants failed to prove that they were exclusive owner and possession of the suit property. The learned trial judge accordingly passed a decree declaring that the plaintiff nos.1 to 4 had jointly  $\frac{1}{2}$  share and the defendants had  $\frac{1}{2}$  share in the suit land. The decree was sent to the Collector for partition and for separate possession by metes and bounds. The defendants was aggrieved by the said judgment and decree and filed Civil Appeal NO.313 of 2001

before the learned District Judge, Pune. The learned District Judge framed five points for determination and after considering the facts and oral and documentary evidence, rendered a independent finding that the plaintiff had proved that the suit property was ancestral property and they had  $\frac{1}{2}$  share in the suit property.

5. With the assistance of Mr.Anturkar, learned senior counsel for the appellant I have perused the orders passed by the learned trial judge as well as by the learned District Judge and also the record filed in the second appeal.

6. In my view, the learned trial judge has considered each and every aspect of the matter in great detail and has considered the oral and documentary evidence and has rendered findings of fact after considering various admissions and undisputed facts on the part of the defendants and has rightly come to the conclusion that the plaintiffs were entitled to  $\frac{1}{2}$  share in the suit property and that the suit property was an ancestral property. The appellate court also has rendered findings independently similar to the findings recorded by the learned trial judge and has rightly dismissed the appeal filed by the appellant. I do not find any infirmity in the order passed by the learned trial judge as well as by the appellate court. The findings of fact recorded by the two courts below are not perverse and thus cannot be interfered with by this court under section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this appeal. The appeal is devoid of merits and is accordingly dismissed.

7. In view of the dismissal of the second appeal, civil application pending if any, is also dismissed. No order as to costs.

**[R.D. DHANUKA, J.]**