

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

***SECOND APPEAL NO. 306 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 569 OF 2016
AND
CIVIL APPLICATION NO. 876 OF 2016***

Baban Nivrutti Satav & ors.

... Appellant/
Applicant

v/s

Sopan Ganpat Satav & ors.

... Respondents

Mr.G.S.Godbole along with Nitin Gangal for the appellants and applicants.

Mr.S.V.Sadavarte for Respondent Nos.2 to 6.

Coram: N.M. Jamdar, J.

Dated: 9 June 2016

ORAL ORDER:

The Appellants challenge the concurrent judgment and orders passed by the learned Civil Judge, District Court, Pune, wherein the suit filed by the Respondents for partition of the suit property has been decreed and the appeal filed by the Appellants was dismissed. The learned Civil Judge, by his judgment and decree dated 18 October 2012, having come to the conclusion that there was no prior partition, oral or written, in respect of the suit property, amongst the parties, directed that the partition be effected and specified the shares accordingly. The learned District

Judge confirmed the factual findings arrived at by the learned Civil Judge holding that there was no prior partition of the suit property.

2 Learned counsel for the Appellants submitted that the learned District Judge has not considered the effect of a receipt as well as the sale deed executed on 6 May 1987. He submitted that pursuant to the sale deed dated 6 May 1987 executed by deceased Nivrutti, in favour of one Hemant M. Mehta, the property bearing No.224/4, as specified in the sale deed, was sold. He submitted that, in the receipt which was executed on the same day, there is a clear admission which would clearly show that there has been a prior partition. He submitted that this document has been incorrectly discarded by both the Courts and therefore a question of law arises as to what is the effect of sale deed as well as the receipt. He submitted that, the property which was sold to Defendant No.12 could not have been allowed to the share of the Appellants. Learned counsel also submitted that while discarding the mutation entry on the ground that they do not confer title, the courts could not have considered that they were pursuant to the entries made in the consolidation proceedings. He relied upon the decision of the Apex Court in the case of *Digambar Adhar Patil v/s Devram Girdhar Patil & anr.*¹. Learned counsel for the Respondents, on the other hand, submitted that a clear finding of fact is recorded by both the courts that there is no prior partition and the sale deed dated 6 May 1987 is also clear on this aspect.

3 The dispute between the parties is, whether there was a prior partition of the suit property. This is essentially a question of fact.

1 AIR 1995 SC 1728

Learned District Judge has primarily relied on the admission given by the witness of the Appellants. If the admission is perused, it is a clear and unequivocal admission that there was no written or oral partition of the suit property. Though the learned counsel for the Appellants may be justified in submitting that there were instances such as revenue entries to indicate that there was prior partition, the learned District Judge has chosen to give more weightage to the admission of the Appellants relying on the decisions of this Court in the case of *Central Bank of India v/s Sion Bakers and Confectioners P. Ltd.*² and *Dy. Collector Land Acquisition Office v/s Rajendra Vassudeo Deshprabhu*³ in which it is held that, an admission is the best evidence against the person giving it, and admission is best form of evidence of facts admitted and requires no other proof. This balancing of comparative merit each piece of evidence is within the domain of the fact finding Court. If the learned Judge has chosen to give effect and rely on an unequivocal admission than only entries in revenue record, merely because another view is possible, a finding of fact cannot be interfered with under Section 100 of the Code of Civil Procedure.

4 The same position also applies of the argument based on the receipt. Both the courts have held that receipt was suspicious since in other places Nivrutti has placed his thumb impression when the receipt bears his signature. Both the courts have also found various other suspicious circumstances, such as, not mentioning the same in the evidence. However, even assuming the receipt is to be read in evidence, still it will not override the admission of the Appellants.

2 2008(5) Mh.L.J. 772

3 2009(3) Mh.L.J. 530

5 As regard the sale deeds already executed and non-joinder of parties and allotting them to the share of the respective parties is concerned, this was not the case put up by the Appellants. When a family dispute of this nature is brought to the Court, parties are expected to be candid in their stand. The stand was taken that there was partition and the property that has come to their respective share was sold in their own right. This stand has been found to be falsified. Further, this position has been admitted by the Appellants in their oral evidence. The request of the learned counsel for the Appellants to now include the said suit property in the common hotchpotch and pass an appropriate order, cannot be considered. As regard the decision relied upon by the learned counsel in the case of *Digambar Patil*, before the Appellate Court, it was relied upon to show that revenue entries will have a value while considering the cases of partition. In the case of *Digambar Patil*, there was no such unequivocal admission given by the party and it is not a case where the Apex Court had laid down that such entries would have a precedence over a clear admission given.

6 In the circumstances, no fault can be found with the approach adopted by the Courts below in decreeing the suit for partition taking into consideration unequivocal admission of the witness of the Appellants.

7 No substantial question of law arises.

8 The second appeal is accordingly dismissed along with both the civil applications.

9 The learned counsel for the Appellants seeks continuation of the ad-

interim order which was passed at the time when papers were produced for urgent orders. It is directed that the execution proceedings to go on, however, possession of the Appellants in respect of the property in question will not be taken for a period of 12 weeks from today.

(N. M. JAMDAR, J.)