

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

**SECOND APPEAL NO.480 OF 2014
ALONG WITH
CIVIL APPLICATION NO.525 OF 2016**

Bhagwat Rambha Pawar & Ors. .. Appellants
Vs.
Pandurang Rambha Pawar & Anr. .. Respondents

Mr.R.S. Alange for Appellants.
None for Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 10th October 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants (original defendant nos.1 to 3) have impugned the judgment and order dated 6th January 2014 passed by the learned District Judge-1, Solapur dismissing the Regular Civil Appeal No.106 of 2008 filed by the appellants. In the said appeal, the appellants had impugned the judgment and decree dated 5th February 2008 passed by the 8th Joint Civil Judge, Junior Division, Solapur in the suit filed by the respondent no.1 (original plaintiff) for partition and separate possession of the suit property.

2. The suit property was the ancestral and joint family property. The plaintiff, defendants and their parents were residing jointly and they are the members of the joint Hindu Family. The joint family had purchased the suit property i.e. the land block no.232 in the name of their father Rambha. The suit property block no.319 was owned by mother which was inherited by her maternal side.

3. It is the case of the plaintiff that after the death of the mother, the plaintiff had demanded the share but the defendants were avoiding to give his share. The plaintiff accordingly filed a suit for partition and separate possession. The suit was resisted by the defendant nos.1 to 3 by filing written statement. It was the case of the defendants that there was partition and they were residing separately for last 35 years.

4. The learned trial Judge framed fourteen issues. Both the parties led oral and documentary evidence before the learned trial Judge. The learned trial Judge initially had passed a judgment and decree on 21st August 1998 and decreed the suit and granted the plaintiff and the defendants each 1/5th share only in Gat Nos.319/1 to 319/4 and house property bearing Gat No.268 of village Padsali, Tal. North Solapur. The plaintiff and the defendants preferred appeals bearing Regular Civil Appeal Nos.353 of 1998 and 370 of 1998 respectively. During the pendency of the appeals, the defendants sought amendments in the pleadings and they had claimed partition of Gat No.421 and Gat No.189 (old Survey No.53/1).

5. Learned trial Judge framed issues in so far as the Block/Gat No.421 is concerned at serial nos.7 and 10. The learned trial Judge has held that the defendant nos.1 to 3 had failed to prove that Block/Gat No.421 was not a joint family property of the plaintiff and the defendants. The plaintiff had proved that the late Chanbai, the maternal aunt of the plaintiff had gifted or given her half share in the consolidation land Block/Gat No.421 of Village Padsali to the plaintiff and that the plaintiff

was a sole and exclusive owner of the said land bearing Block/Gat No.421.

6. The original defendant nos.1 to 3 filed an appeal (Regular Civil Appeal No.106 of 2008) before the learned District Judge-1, Solapur. The appellants restricted their challenge to the findings and conclusions drawn by the learned trial Judge in respect of the land bearing Block/Gat No.421.

7. Mr.Alange, learned counsel appearing for the appellants (original defendant nos.1 to 3) submits that the learned trial Judge has not considered the oral evidence in right perspective in respect of the issue of partition of the land bearing Block/Gat No.421.

8. A perusal of the impugned judgment and decree passed by the learned trial Judge indicates that the learned trial Judge framed two separate issues in so far as the partition of the land bearing Block/Gat No.421 is concerned.

9. It was the case of the plaintiff that the said plot of land was gifted to the plaintiff by the owner late Chanbai who was the maternal aunt of the plaintiff and the said property belonged to the plaintiff exclusively and was not a joint family property. After considering the oral as well as the documentary evidence led by the parties, the learned trial Judge rendered a finding of fact that the said suit property was not a joint family property but was gifted to the plaintiff exclusively by the then owner late Chanbai who was the maternal aunt of the plaintiff.

11. The first appellate Court formulated four points for determination including the issue whether the field bearing Gat No.421 of village Padsali is joint family property of the parties or not and after considering oral and documentary evidence, the first appellate Court rendered the finding on the said issue in negative.

12. I am thus not inclined to accept the submission of the learned counsel for the appellants (original defendant nos.1 to 3) that the learned trial Judge has not considered the oral and documentary evidence in right perspective. Both the Courts have considered the oral evidence led by both the parties in a great detail in the impugned judgment and decree. The findings rendered are concurrent findings and being not perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908

13. In my view, there is no substantial question of law arises in this appeal. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.