

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

SECOND APPEAL NO.584 OF 2014

Chandar Shidu More (since deceased)
through his legal heirs

1.1 Smt.Shantabai Chandar More & Ors. .. Appellants

Vs.

Lala Lakhu More (since deceased)
through his legal heirs

1A. Sambhaji Lala More & Ors. .. Respondents

Mr.Mandar Limaye for Appellants.

None for Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 5th October 2016

P.C.

. By this second appeal, the appellants (original plaintiffs) have impugned the judgment and decree dated 12th February 2014 passed by the Ad-hoc District Judge-1, Sangli dismissing the appeal (Regular Civil Appeal No.163 of 2006) filed by the appellants thereby impugning the judgment and decree dated 28th February 2006 passed by the learned Civil Judge, Junior Division, Tasgaon dismissing the suit filed by the appellants inter alia praying for partition and separate possession.

2. It was the case of the plaintiffs that the suit lands were Mang watan lands and were belonging to Mang (More family). According to the plaintiffs, the suit lands were out of R.S.No.624 divided into a branches. Lakhu Manu More was having 4 Ana share, Jaiwant Parasu More was having 2 Ana share, Vishnu Malhari More was having 4 Ana share, Bhimrao Aba More was having 2 Ana share and Maruti Parasu More was having 2 Ana share.

3. It was the case of the plaintiffs that the suit lands were belonging to the share of Lakhu More and was having 8 Ana share in the suit lands. The suit was resisted by the defendant nos.1, 5, 7 and 17 by filing written statement. It was the case of the defendants that the plaintiff and his predecessors were not resident of Malwadi (Bhilawadi) and they were not rendering any services. The plaintiff and his predecessors were not watandar and were not in actual possession of the suit lands. The plaintiffs had also filed a suit earlier i.e. Regular Civil Suit No.79 of 1966 in respect of the said suit properties and between the same parties which was already decided on merits and was dismissed.

4. Learned trial Judge framed nine issues. Both the parties led oral as well as the documentary evidence before the learned trial Judge. The learned trial Judge after considering the oral as well as the documentary evidence has held that the plaintiffs had proved that they had 2 Ana share in the suit lands and the defendants had proved that the partition of the suit lands took place between them and other co-sharers in the suit lands. Learned trial Judge also rendered a finding that the principle of Res-judicata had applied to this suit. It is also held that the suit was not within limitation. Learned trial Judge has held that the plaintiff had not given genealogy in the plaint to infer relation between himself and the defendants as well as the relationship of defendants with Lakhu More Mang. Learned trial Judge has also placed reliance on the order passed by the learned Tahsildar holding that Lakhu was having only 2 Ana share when the plaintiffs had been alleging that Lakhu was having 4 Ana share. Learned trial Judge has held that after coming into force the Bombay Inferior Village Watan Abolition Act, 1958, all

inferior watan are abolished and thus the resumption and regrant of watan lands to watandar does not take character of the land as joint family property. The plaintiffs had also failed to prove that Lakhu More was grantor of the suit lands as representative of joint family and his joint family was consisting predecessors of the plaintiff also.

5. Being aggrieved by the said judgment and decree passed by the learned trial judge, the plaintiff had filed an appeal before the learned Ad-hoc District Judge-1, Sangli. By the judgment and decree dated 12th February 2014, the learned Ad-hoc District Judge-1 dismissed the said appeal after considering the oral and documentary evidence led by both the parties. Learned Ad-hoc District Judge-1 has held that the entire deposition of PW 1 was full of admissions. He had admitted that the suit land was watan land which was originally inherited by ancestor of four persons. The first appellate Court has held that the plaintiffs had no concern with the suit property belonging to Lakhu Manu More and accordingly confirmed the findings rendered by the learned trial Judge.

6. With the assistance of the learned counsel for the appellants, I have perused the aforesaid findings recorded by both the Courts which are rendered after considering the oral and documentary evidence led by the parties and not being perverse and concurrent findings, I do not find any infirmity with the order passed by both the Courts. No substantial question of law arises in this appeal. Appeal is devoid of merits and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.