

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO.786 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 1669 OF 2015****Smt.Pratibha Prakash Mohite****..... Appellant****VERSUS****Nivrutti Yashwant Mohite (Deceased) & Ors.****..... Respondents**

Mr.Umesh R.Mankapure for the Appellant.

CORAM : R.D. DHANUKA, J.**DATE : 27th SEPTEMBER, 2016****P.C.**

By this appeal filed under section 100 of the Code of Civil Procedure, 1908 the appellant (original plaintiff) has impugned the judgment and decree dated 18th December, 2014 passed by the learned Adhoc District Judge-2, Sangli dismissing the Regular Civil Appeal No.359 of 2007 by which the appellant, had impugned the judgment and decree passed by the learned judge on 5th March, 2007 dismissing the suit filed by the appellant for partition of the 1/5th share of the plaintiff, possession, declaration and mesne profits.

2. The defendant nos. 2 and 3 resisted the suit and contended that the suit properties were not ancestral properties but were self acquired properties of defendant no.1. It was averred that the defendant no.1 had executed his Will on 4th May, 1995. It was submitted that there was only one ancestral property bearing block No.178 and it was sold by defendant no.1 for medical treatment. It was also averred that the plaintiff was entitled only for 1/10th share in the suit property. The suit was also resisted by defendant no.6. The suit proceeded ex-parte against the

defendant nos. 1, 5 and 7.

3. The learned trial judge framed six issues and after considering the oral and documentary evidence, dismissed the suit in toto. Being aggrieved by the said judgment and decree dated 5th March, 2007 passed by the learned trial judge, the plaintiff herein preferred an appeal (Regular Civil Appeal No.359 of 2007) in the District Court, Sangli.

4. The learned Ad-hoc District Judge framed five points for determination and considered the oral and documentary evidence led by both the parties. By a judgment and decree dated 18th December, 2014 passed by the learned Ad-hoc District Judge-2, Sangli, Regular Civil Appeal filed by the plaintiff is partly allowed. It is held that the plaintiff is entitled to 8/49th share in the agricultural land Gat No.178 and house property No.762. It is held that the plaintiff and defendant nos. 2 to 7 are entitled to 8/49th share each. Being aggrieved by the said judgment and decree dated 18th December, 2014 passed by the learned Ad-hoc District Judge-2, Sangli, the plaintiff has preferred this appeal under section 100 of the Code of Civil Procedure, 1908.

5. Mr.Mankapure, learned counsel for the appellant (original plaintiff) submits that the plaintiff had share not only in the two properties in respect of which the first appellate court has determined share of the plaintiff but also in respect of the other properties which were ancestral properties of the deceased. He submits that the first appellate court ought to have considered the entire evidence in proper perspective.

6. Learned counsel fairly invited my attention to the cross examination of the

plaintiff recorded before the learned trial judge. A perusal of the cross examination of the plaintiff clearly indicates that the plaintiff has admitted that the suit properties had been purchased by her father-in-law and brother of the father-in-law jointly. She admitted that except the property Gat No.178 the other properties were self acquired properties of the defendant no.1 and his brother. She further admitted that the defendant no.1 had executed a registered Will on 4th May, 1995.

7. A perusal of the order passed by the first appellate court indicates that the first appellate court has also considered the admission of the defendant nos. 2 and 3 in the written statement that Block No.178 was the ancestral properties. The first appellate court has also considered the evidence of the defendant no.3 who admitted that the only land from Block No.178 is the ancestral property. The house properties from C.S.No.762 remained to be partitioned. Considering the evidence of both the parties, the first appellate court rightly held that the plaintiff was entitled to 8/49th share in the agricultural land Gat No.178 and also in house property no.762. It is held that the plaintiff would be entitled to 8/49th share in both the properties.

8. In my view, the first appellate court has considered the entire documentary as well as oral evidence led by both the parties and has rightly allowed the appeal partly and held that the plaintiff had proved her entitlement in respect of 8/49th share in the properties bearing agricultural land no. 178 and house property no.762. In my view the plaintiff could not prove that the other properties were also the ancestral properties.

9. In my view the findings recorded by the first appellate court are not perverse and thus cannot be interfered with by this court under section 100 of the Code of

civil Procedure.

10. No substantial questions of law has arisen in this appeal. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

11. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]