

JPP

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

SECOND APPEAL NO. 366 OF 2010

Mr. Pramod Savlaram Ghadigaonkar. ... Appellant.

V/s.

Satyabhama Vithoba Ghadigaonkar
and Ors. ... Respondents.

Mr. K.H. Holambe-Patil for the Appellant.
Mr. Sanskar Marathe for Respondents 1 and 2.

CORAM : N.M. Jamdar, J.

30 June, 2016.

Oral Order :-

Heard the learned Counsel for the parties.

2. The Appellant challenges the judgment and orders passed by the Civil Judge, Junior Division, Kankavli and the District Judge, Sindhudurg, dismissing the Suit and Appeal of the Appellant.

3. The Appellant had filed a Suit for partition of the Suit property contending that there is no previous partition and therefore,

the Appellant is entitled to the 7/72 share in the Suit property. The Respondents took a stand that there has been a partition and the parties have been living separately. The Courts dismissed the Suit and Appeal filed by the Appellant.

4. The learned Counsel for the Appellant submitted that the theory of oral partition cannot be accepted as pursuant to the oral partition there are no entries in the revenue record which is necessary, and once partition take place entry has to be made in the ownership column. He submitted that since these entries have not been made there was a previous partition.

5. This submission cannot be accepted. Both the Courts have rendered a finding of fact that the parties have been living separately in separate houses with different khata numbers for last 75 years and that they are separate in food, estate and worship. The Respondents took a clear stand in the written statement that the parties are living separately and with different vahivat. The Respondents have also purchased some of the properties under tenancy proceedings. It has been proved by the Respondents by leading evidence that this position has prevailed for last 75 years. Once the parties are separate in food, estate and worship and living in houses of different khata numbers, merely because the entries have not been made in the revenue record, the finding of fact of

separation and status of oral partition, cannot be upset in limited jurisdiction under Section 100 of the Code of Civil Procedure.

6. It is not possible to re-appreciate the evidence in the Second Appeal. As stated earlier, merely because the revenue entries are not maintained, the other overwhelming evidence of partition cannot be set aside only on this ground. No question of law arises. The Second Appeal is accordingly dismissed.

(N.M. Jamdar, J.)