

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

**SECOND APPEAL NO.890 OF 2015
along with
CIVIL APPLICATION NO.1949 OF 2015
IN
SECOND APPEAL NO.890 OF 2015**

Gangadhar Dwarkanath Vartak (since deceased) & Ors.

.. Appellants/Applicants

Vs.

Jaiprakash Anant Vartak & Ors.

.. Respondents

Mr.Sunil Chincholikar for the appellants/applicants.

Mr.Pratap Patil i/by Mr.Govind Solanke for the respondent nos.1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 2nd March 2016

P.C.

. By this second appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants have impugned the judgment dated 30th July 2015 passed by the District Judge-1, Raigad-Alibag allowing the appeal filed by the original defendant nos.1 and 2 and setting aside the decree passed by the learned trial Judge and also dismissing the Regular Civil Suit No.21 of 1996 filed by the appellant no.1 (original plaintiff).

2. The suit was filed by Mr.Gangadhar Dwarkanath Vartak who was claiming through Mr.Dwarkanath Vartak who was the brother of Mr.Anant Vartak. Mr.Dwarkanath Vartak and Mr.Anant Vartak were the two sons of Mr.Narayan Keshav Vartak. The plaintiff and defendant nos.3, 4, 5 and 8 are the class I legal heirs of deceased Mr.Dwarkanath. It was the case of the plaintiff and defendant nos.3, 4, 5 and 8 that the

suit property was a joint property whereas it is the case of the defendant nos.1 and 2 that the suit property was a self-acquired property of their father Mr.Anant Vartak under a registered Sale Deed.

2. A perusal of the record indicates that though a Sale Deed produced by the defendant nos.1 and 2 before the trial Court and placed reliance thereon in the written statement, the learned trial Court overlooked the said Sale Deed which was not disputed and passed a decree in favour of the plaintiff holding that the suit property was a joint property and passed an order for partition of the suit property.

3. Being aggrieved by the order and decree passed by the learned trial Judge, the defendant nos.1 and 2 filed an appeal being Civil Appeal No.229 of 2006 in the Court of District Judge-1, Raigad, Alibag. By an order dated 30th July 2015, the District Judge-1, Raigad, Alibag allowed the said appeal. On perusal of the order passed by the District Judge-1, it is made clear that the impugned order passed by the learned trial Judge is set aside on the ground that the learned trial Judge has not considered the Sale Deed which clearly proved that the suit property was a self-acquired property by Mr.Anant Vartak. Learned trial Judge could not have passed an order of partition.

4. In so far as the statement made by deceased Mr.Anant Vartak before the Executive Magistrate is concerned, the learned counsel appearing for the respondent nos.1 and 2 states that such statement made before the Executive Magistrate clearly indicates that the parties had agreed not to obstruct their peaceful possession and ownership of the property.

5. In my view, the said statement made before the learned Executive Magistrate thus would not assist the case of the appellants herein. I do not find any infirmity with the order passed by the Lower Appellate Court. No substantial question of law has arisen in this appeal. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed.

R.D. DHANUKA, J.