

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

**SECOND APPEAL NO. 893 OF 2015
WITH
CIVIL APPLICATION NO. 1956 OF 2015**

Shri Hanmant Dnyanu Sawant & Anr. Appellants

Versus

Smt. Godabai ramu @ Ramchandra Sawant
(Since deceased through her L.Rs.)
Shri Kisan ramchandra Sawant & Ors. Respondents

Mr. Mahesh Rawool I/b Shah Kayyal P, for Appellants/Applicants
Mr. Girish Agrawal, for Respondent Nos. 2 to 7.

***CORAM : N. M. Jamdar J.
Wednesday 20 July, 2016***

P. C.

. The learned Counsel for the appellants challenge the Judgment and Order passed by the learned District Judge-2, Karad, District Satara dated 16.09.2015 in Regular Civil Appeal No. 19 of 2009, partly allowing the appeal.

2. The appellants/original plaintiffs filed a suit for partition of properties prescribed in Schedule A, B, C & D. The

learned Civil Judge, Junior Division, Patan by Judgment and order dated 4.02.2009 decreed the suit and declared that appellants have $\frac{1}{2}$ share in all four properties. The appeal was filed by the respondents/defendants and the learned District Judge, Karad partly allowed the appeal. In Properties at Schedule A the appellants/plaintiffs were given $\frac{1}{2}$ share. As regard properties listed in Schedule B, C & D, the claim of the appellants was negated and the Judgment and Order passed by the learned Civil Judge, Patan was accordingly modified and set-aside. The present appeal is filed in respect of properties in Schedule B, C & D.

3. Heard the learned Counsel for the parties.

4. As regards the properties at Schedule C are concerned, the learned Counsel for the appellants submitted that defendant no. 2 categorically admitted that the common ancestor Shri Laxman Kedari Sawant was tenant in the suit property. He submitted that nothing is shown as to how Ramu became tenant in the suit property. He submitted that this property therefore was a joint family property and name of Ramu was entered being eldest in the family. This submission cannot be accepted. The admission by the defendant no. 2 of cultivation of lands by Laxman as tenant is only for two years i.e. 1932-33 and 1940-41. It has come on record that as in the year 1957, the relevant year for the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, Ramu was

cultivating the suit land as a tenant. The Mutation Entry No. 4868 was effected in his name. No complaint was made in respect of the entry. The tenancy case was instituted by Ramu in furtherance of the provisions of the Tenancy Act conferring rights on the title of the land. Laxman in his life time did not take any step to declare himself as a tenant. The plaintiff himself left his village in the year 1955 and he was serving in a Cotton Mill in Mumbai. Considering this position, the learned District Judge, Karad concluded that Ramu was tenant in the suit property in his own right and his right as a statutory tenancy was recognized by mutation entry, to which no objection was taken.

5. As regard property at Schedule D is concerned, it was the contention of the learned Counsel for the appellants that this property was jointly cultivated and names of all co-sharers are shown. The submission is not correct. The appellants/plaintiffs admitted that there is no entry of Laxman in the revenue record. There is no question of any joint cultivation by the appellants as his own contention is that he has left village in the year 1955. Therefore, there is no error committed by the learned District Judge, Karad in concluding that the property at Schedule D was cultivated by Ramu in his own right.

6. As regard properties at Schedule B are concerned, the sale-deeds have been executed in faour of Ramu. It is the case of

the appellants that they financed the purchase of these properties. As regards existed nucleus for purchase of these properties, it is only in properties Schedule A which is admeasuring 11 Ares and 30 Ares. It is admitted by the appellants that these properties could not generate in sufficient funds for purchase. As regards finance provided by the appellants, no particulars have been produced on record for the same. Therefore, there can be no error as regards the conclusion reached in respect of the Schedule B property.

7. The learned Counsel then submitted that the house has been constructed in the property survey no. 174/13 which is jointly used and therefore it has to be considered that the property is joint family property. The learned District Judge has considered the evidence on record and has found that the case of the defendants that they have constructed the property with permission of Dnyanu is probable. It is not possible to re-appreciate the evidence as regards the contention of the learned Counsel for the appellants in respect of the sale-deed dated 8 May, 2000. The learned District Judge has taken note that though Dnyanu was one of the vendors of the property, it was possible that since his name appeared in the records, the purchaser to be on the safe side insisted on signatures of all co-sharers. Once it is held that the other properties were not joint family properties, only on this circumstance, the finding cannot be rendered that all properties were joint family properties.

The view taken by the learned District Judge cannot be stated to be a perverse view. No substantial question of law arises.

8. The Second Appeal is accordingly dismissed.

(N. M. Jamdar, J.)