

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

***SECOND APPEAL NO. 67 of 2012
ALONG WITH
CIVIL APPLICATION NO. 91 OF 2012***

Vimal Mahadev Shewale & ors. ... Appellants/Applicants
v/s

Shri Balaram Tukaram Kashid
(since deceased, through L.R.s.)
1 a) Kondiram alias Ashok Balaram
& ors.

... Respondents

***ALONG WITH
SECOND APPEAL NO. 627 of 2014
ALONG WITH
CIVIL APPLICATION NO. 84 OF 2012***

Shri Mahadev Dadu Shewale & anr. ... Appellants/Applicants
v/s

Shri Balaram Tukaram Kashid
(since deceased, through L.R.s.)
1 a) Kondiram alias Ashok Balaram
& ors.

... Respondents

Mr.Vishwajeet Mohite i/by Siddharth Karpe for the appellants in both appeals and applicants in both applications.

Mr.P.S.Gole for Resp. Nos.1 A to 1 F and Resp.No.2 in both appeals.

Coram: N.M. Jamdar, J.

Dated: 24 June 2016

ORAL ORDER:

These two appeals have been argued together as they arise from connected proceedings.

2 In Second Appeal no.67 of 2012, the Appellants have challenged the judgment and order passed by the learned District Judge, Karad, dated 22 November 2011 in R.C. Appeal No.65 of 2004 arising out of Suit No.173 of 1995. Second Appeal No.627 of 2014, the Appellants challenge the judgment and order passed by the learned District Judge, Karad in R.C. Appeal No.95 of 2004 arising from Suit No.226 of 1998.

3 Suit No.173 of 1995 was filed by the Appellants against the Respondents seeking perpetual injunction of the suit properties and Suit No.226 of 1998 was filed by Respondent No.1 for half share by partition. There were two brothers Mahadev and Gopinath. Appellant No.1 in Second Appeal No.67 of 2012 is the wife of Mahadev and Pushpa is the wife of Gopinath. The question that was debated in the Courts below was, whether there was partition of the properties owned by Hirabai, mother of Mahadev and Gopinath and whether Pushpa sold her share to Respondent No.1, who instituted the suit for partition. Both the courts came to the conclusion that the partition was effected and Pushpa sold the property which came to her share, to Respondent No.1. Accordingly, the suit filed by Respondent No.1 was decreed and the suit filed by the Appellants for

injunction to restrain the Respondents from interfering with the suit property, was dismissed. Two appeals were filed by the Appellants before the District Court, which were dismissed.

4 Learned counsel for the Appellants advanced two submissions. He submitted that, there was no partition and only on the basis of mutation entry it cannot be held to be so. He submitted that, therefore, Pushpa did not have any title to pass it on to Respondent No.1. Both the courts have taken the documentary and oral evidence led by the parties into consideration. Hirabai, admittedly the owner of the property filed a written statement along with Pushpa, reiterating that partition did take place. The partition memo between Pushpa and Vimal was placed on record. It was considered by the appellate Court. The mutation entry indicating that there was a partition, was effected by the original owner Hirabai in the year 1990 which was not objected to by the Appellants. Learned counsel for the Respondents, therefore, rightly relied on the decision of *Digambar Adhar Patil v/s Devram Girdhar Patil & anr.*¹ to contend that the mutation entry can provide evidence in support of the claim that partition has taken place and registered partition deed is not necessary. The finding of fact reached by both the courts, therefore, that partition was effected, cannot be stated to be reached on no evidence and this finding therefore cannot be disturbed. Since the partition had been effected, Pushpa sold her share to Respondent

1 1995 Supp.(2) SCC 428

No.1, who, therefore, rightly instituted a suit for obtaining his share. The suit filed by the Appellants for injunction is to restrain the Respondents in respect of the very property for which sale deeds have been executed in favour of Respondent No.1. The sale deeds have been proved. Therefore, both the Courts have rightly refused the decree of injunction in favour of the Appellants.

5 In the circumstances, no question of law arises in both these appeals.

6 The appeals are accordingly dismissed. The civil applications are disposed of.

(N. M. Jamdar, J.)