

JPP

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

***SECOND APPEAL NO. 164 OF 2016
with
CIVIL APPLICATION NO. 274 OF 2016***

Mr. Arjun Rama Kumbhar. ... Appellant/Applicant.

V/s.

Smt. Sakhubai Bhiva Kumbhar & Ors. ... Respondents.

Mr. Datta Pawar for the Appellant/Applicant.
None for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 7 APRIL, 2016.

P.C. :-

The Appellant challenges the concurrent findings and orders passed by the learned Civil Judge, Junior Division, Panhala, Kolhapur and the learned District Judge, Kolhapur, dismissing the Suit and Appeal filed by the Appellant.

2. The Appellant had by filing a Civil Suit sought a declaration that the sale deed dated 23 December 2004 executed by the Respondent Nos.1 to 3 in favour of Respondent No.4 be declared as cancelled and sought a prayer for injunction. The case of the Appellant primarily was that the property in question was a

joint family property and it was never partitioned. Both the Courts came to the conclusion that the assertion of the Appellant that the property was never partitioned could not be accepted and proceeded to pass the impugned orders.

3. The learned Counsel for the Appellant firstly submitted that the Respondent Nos.1 to 4 did not contest the suit and therefore, the assertion of the Appellant that the property was never partitioned has gone un-controverted. He relied upon the decisions which were also placed before the learned District Judge and which have been enumerated in paragraph 12 of the decision of the learned District Judge.

4. The Appellant seeks to challenge the said sale deed which was executed in favour of the Respondent No.4. If the Appellant is enforcing his right as against Respondent No.4 merely because the other family members do not come forward to contest the suit having received monetary compensation for execution of the sale deed, a decree in favour of the Appellant cannot automatically follow. The Appellant will have to discharge his initial burden as a plaintiff in support of his assertion. The question whether partition took place or otherwise with a question of fact. Both the Courts have taken note of the fact that the Defendant No.7 had independently occupied a property C.S.No. 214 and which he had admitted also sold. Both the Courts also took into consideration the revenue records and have come to a

conclusion that the family members were separately enjoying their property and there was in fact a partition.

5. The learned Counsel for the Appellant submitted that the conclusion drawn by the Appellate Court based on sale deed executed by Defendant No.7 is not correct as the property was not sold to one Shelke but to one Kumbhar. Even assuming this position to be correct, it will not advance the case of the Appellant any further. The question is whether the Defendant No.7 independently dealt with the property stated to be of the joint family and having that being established the conclusion drawn by both the Courts that there was a partition of joint family and individual members occupied the same in their own right cannot be faulted with. There is no perversity in this finding of fact reached on assessment of evidence. No substantial question of law arises. The Second Appeal is accordingly dismissed. The Civil Application is accordingly disposed of.

(N.M. JAMDAR, J.)