

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.349 of 2014
(Chandan s/o Dayaram Naik and others v. Latu s/o Udaram Naik (Dead),
through LRs. Kamalabai wd/o Latu Naik and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.V. Kotwal, Advocate for Appellants.

Coram : R.K. Deshpande, J.
Date : 6th June, 2016

The Trial Court passed a decree for partition and separate possession on 30-4-2009 in Regular Civil Suit No.17 of 2008. Regular Civil Appeal No.42 of 2009 has been dismissed by the lower Appellate Court on 7-4-2014. Hence, the original defendants are before this Court in this second appeal against the concurrent findings of fact recorded by the Courts below.

The decree for partition is based upon the finding that the property was the ancestral property in the hands of Dayaram and was, therefore, available for partition. The contention that it was the self-acquired property of Dayaram, has been rejected on the ground that there is no document produced on record to establish this fact. The learned counsel for the appellants has tendered the photo-stat copy of one sale-deed to allege that it was in the name of Dayaram. The original sale-deed is not

produced on record and, therefore, it is not possible to accept the photo-stat copy at this stage. There is no perversity in recording the finding of the Trial Court that the property is ancestral property. The question of allotment of shares was not raised before the lower Appellate Court and on that count also, no substantial question of law arises in this second appeal.

The second appeal is dismissed.

Judge.

Lanjewar