

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 341 OF 2017
WITH
CIVIL APPLICATION NO. 6069 OF 2017**

Maroti s/o Tukaram Bhadade,
Age: 65 years, Occu: Agri. & Pensioner,
r/o. Wairagad, Tq. Ahmedpur,
Dist. Latur,
presently residing at Ahmedpur,
Dist. Latur ..APPELLANT

VERSUS

1. Gavlanbai w/o Angad Bhadade,
Age: 57 years, Occu: Agril.,
2. Machindra s/o Angad Bhadade,
Age: 35 years, Occu: Agril.,
3. Gajanan s/o Angad Bhadade,
Age: 32 years, Occu: Agril.,
4. Udhav s/o Tukaram Bhadade,
Age: 75 years, Occu: Agri.,

All R/o. Wairagad, Tq. Ahmedpur,
Dist. Latur

5. Vidyabai w/o Raosaheb Mule,
Age: 62 years, Occu: Household &
Agril., R/o. Tembhurni Road,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur ..RESPONDENTS

Mr J.R. Patil, Advocate for appellant;
Mr Amey Sabnis, Advocate h/f Mr V.D. Gunale,
Advocate for respondent Nos. 1 to 3

(2)

CORAM : N.W. SAMBRE, J.**DATE : 1st AUGUST, 2017****ORAL ORDER :**

The appellant-original defendant No.2 suffered a decree for partition and separate possession passed by Civil Judge Senior Division, Ahmedpur in Regular Civil Suit No.97 of 2010 by judgment and decree dated 6th January, 2015, which was later on confirmed in Regular Civil Appeal No. 2 of 2015.

2. In the present appeal, Mr. Patil, learned Counsel for the appellant admits that land Gat Nos. 83, 88, 145 and 240 are ancestral properties and impugned judgments are not questioned in relation to the said properties. He would restrict his claim to the extent of land Gat No. 229 and 232 admeasuring 40 Are and 3 Are. It is the case of present appellant that one Irba was blessed with son Tukaram. Present appellant and respondents are legal heirs of Tukaram. In 1980 Tukaram effected

(3)

partition of his property in between himself and his three sons, as daughters have relinquished their share. It is claimed that land to the extent of 40 Are and 3 Are out of Gat Nos. 229 and 232 had given to the share to present appellant, however, by mistake, in stead of recording correct name of appellant Maroti s/o Tukaram, his name was incorrectly recorded as Maroti s/o Irba (grandfather of appellant). According to him, the appellant has compared to other parties to the suit viz., plaintiff-Angad and defendant No.1 Udhav, who are also sons of deceased Tukaram got lesser land from Gat No. 5 and 19. According to him, for these reasons, Tukaram had given him additional land to the extent of 40 Are and 3 Are from Gat No. 229 and 232 which was also ordered to be partitioned. So as to substantiate his claim to make out a case for showing indulgence in second appellate jurisdiction, learned Counsel for the appellant would urge that relinquishment deed executed by sisters excludes land Gat Nos. 229 and 232, which itself speaks of that said lands were already gone

(4)

to the share of present appellant and as such, right in the said property was not relinquished by sisters. He would, in addition, urge that witness of appellant namely, Manohar Bhaurao - DW-3, adjoining land owner deposed in favour of present appellant that the appellant is in possession of the suit property for more than 30 years. He would also rely upon the evidence of plaintiff No.2, who has admitted possession of the appellant over the suit property since 30 years so as to infer that the appellant remained in possession of the suit property by virtue of partition effected in 1980. According to him, as such, question of law that needs to be considered is, in view of 1980 partition effected in relation to the land Gat Nos. 229 and 232, whether same can again be subjected to partition?

3. Per contra, Mr. Sabnish, learned Counsel for the respondent would urge that equal division was made from land Gat Nos. 5 and 19 in favour of three brothers Udhav, Maroti and Angad by Tukaram

(5)

in partition of 1980. Tukaram remained in possession of his share as in all four shares were carved out of suit property. The property land Gat Nos. 229 and 232 remained in possession of deceased Tukaram, of which partition is sought to be ordered. He would rely upon 1989 survey carried out by revenue authorities and also evidence brought on record to the effect of independent possession of each of the parties to the suit. Therefore, sought dismissal of the appeal.

4. Having considered the rival submissions, it is required to be noted that learned trial Court considered the claim of appellant having come out with denial of getting equal share from land Gat No.5 and 19. It is to be noted that in view of such denial which is given by the present appellant, it was expected of the appellant to prove that he got less share in 1980 partition interse between the parties to the suit. But for claiming possession over the suit property for last more than 30 years, no material whatsoever is brought on record by the appellant to demonstrate

(6)

that he got less share in the property from land Gat Nos. 5 and 19. The other mutation entries remained in favour of deceased Tukaram s/o Irba. The 7/12 extract though speaks of entry in the name of present appellant in respect of land Gat Nos. 229 and 232, however, the said name is wrongly mentioned as could be inferred from reading such entry in 7/12 extract. The 7/12 extract reflects name of Maroti s/o Irba and Tukaram Irba. Irba is father of Tukaram and grandfather of present appellant. It was expected of the appellant being in possession of the property since last 30 years having claimed that said has given to his share in 1980 partition to carry out appropriate correction in the revenue record. The appellant is continued with such entries, particularly in the backdrop of the fact that such property being Survey Nos. 229 and 232 had fallen to the share of Tukaram s/o Irba and not Maroti s/o Irba-the appellant. Admittedly, factual matrix depicts that the appellant is not son of Irba and as such, revenue entries cannot be read down in favour of the present appellant.

(7)

5. Apart from above, the respondents-plaintiffs have in clear terms demonstrated that from land Gat Nos. 5 and 9, all three sons of Tukaram got almost equal share from the property of deceased Tukaram. Once the said fact was established by the respondent-plaintiff, it was duty of the appellant to prove that disputed land being Gat Nos.229 and 232 had fallen to the share of appellant.

6. Both the Courts below have considered the revenue entries, mutation entries and effect of relinquishment deed executed by sisters relinquishing their share in relation to all the properties but for Gat Nos.229 and 232. Both the Courts below having recorded findings of fact against the present appellant, in my opinion, I hardly see any degree of perversity in appreciation of fact and evidence on record, which prompts for any interference in the concurrent findings recorded by both the Courts below. The appeal, in

(8)

my opinion, as such, lacks merit, fails and stands dismissed.

7. Consequently, pending civil application stands disposed of.

(N.W. SAMBRE, J.)

Tupe