

Sequeira

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

***SECOND APPEAL NO. 301 OF 2017
Along with
CIVIL APPLICATION NO. 626 OF 2017
(For stay)***

Yakub Babumiya Jamadar .. Appellant
Vs
Mohiddin Babumiya Jamadar and ors. .. Respondents

Mr.Surel Shah and Ms.Gauri Shah, for the Appellant / Applicant.

***Coram : N.M.Jamdar, J.
Date : 18 April 2017.***

Oral order :

Heard learned counsel for the Appellant.

2. The Appellant is the original Defendant No.1 in the Regular Civil Suit bearing No.37 of 2007 filed by the Respondent No.1-Plaintiff seeking partition of the suit property. The suit was decreed by the learned Civil Judge Junior division, Kolhapur by judgment and order dated 25 September 2012. The Appeal bearing No.501 of 2012 filed by the Appellant was dismissed by the learned District Judge, on 5 October 2015.

3. The learned counsel for the Appellant contended that the suit property was in the exclusive ownership of the Appellant and both Courts have erred in holding otherwise. Initially, the suit property was granted to the father of the Appellant and the other Plaintiffs, his brothers. After the death of the father, though the name of the Appellant appears in the record and there is a communication to that effect by the Government, both the Courts have held that it was not an independent or separate grant but only recognition of pre-existing rights of Babumiya after whose death all his legal heirs succeeded to the property. There is nothing placed on record that the Government had specifically granted this property by an independent grant to the Appellant, excluding the other legal heirs. That being the position there is no error in the view taken by both the Courts that the property needs to be partitioned and the agreement executed by Appellant-Defendant No.1 in favour of Defendant No.2 is in violation of the rights of the Plaintiff. No question of law arises. Second Appeal is accordingly dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)