

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

**SECOND APPEAL NO.534 OF 2016
WITH
CIVIL APPLICATION NO.1089 OF 2016**

Shri Raosaheb Gopala Bhorde And Others ... Appellants/Applicants
Versus

Shri Bhausaheb Gopala Bhorde
since deceased

Shri Dadabhau Bhausaheb Bhorde
And Others

... Respondents

.....

Mr. P.S. Dani, Senior Advocate i/b Jaydeep Deo for the
Appellants/Applicants.

Mr. P.B. Bhargude for Respondent Nos.2, 3 And 8.

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CORAM : S.C. GUPTE, J.

DATE : 20 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2 The second appeal challenges a judgment and order passed by the District Judge at Pune in Civil Appeal No.333 of 2010. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellants herein and confirmed the decree of dismissal passed by the Trial Court in the suit filed by the Appellants.

3 The Appellants (original Plaintiffs) filed the present suit praying for a declaration that the division of the property made by the father of Plaintiff No.1 and Defendant No.1 as and by way of temporary family arrangement

was proper and legal. In the alternative, the Plaintiffs prayed for partition and separate possession of one half share of the Plaintiffs and Defendant Nos.4 and 5 (Plaintiff Nos.2 and 3 being sons of Plaintiff No.1, and Defendant Nos.4 and 5 being wives of Plaintiff No.1.)

4 The suit was resisted by Defendant No.1 by filing a written statement. In the written statement, Defendant No.1 claimed that the suit properties were ancestral properties and were divided between Plaintiff No.1 and Defendant No.1 during the lifetime of their Father, Gopala, in 1984, and that ever since this division, the properties have been in separate occupation and possession of the parties. The Trial Court accepted the defence and rejected the Plaintiffs' suit on the ground that the Defendants had proved the previous partition of the suit properties as claimed by them and in the premises, the Plaintiffs were not entitled to claim partition. The Trial Court also held that the Plaintiffs had failed to prove the division of the suit properties, as claimed by them, by virtue of the alleged temporary family arrangement.

5 These findings were confirmed by the lower Appellate Court, holding that the Plaintiffs had failed to prove that there was division of the properties, as claimed by them, by any temporary family arrangement. The lower Appellate Court also held that Defendant No.2, 3 and 8 had proved that there was a previous partition of the suit properties. The Court, in the premises, held that the Plaintiffs were neither entitled to the declaration prayed for by them on the basis of the alleged temporary family arrangement nor a decree of partition based on their purported one half undivided share in the suit properties.

6 Whether there was a previous partition between the parties as claimed by the Defendants or whether the parties were in possession of their respective portions of properties as claimed by the Plaintiffs under a temporary family arrangement, are pure questions of facts. Both Courts below have come to a concurrent finding that the parties were not in possession of properties or portions as claimed by the Plaintiffs under any temporary family arrangement, but that there was prior partition of the suit properties as claimed by Defendant Nos.2, 3 and 8. No substantial question of law arises on these findings. The findings are supported by evidence and not arrived at upon consideration of irrelevant or non-germane material or without considering any relevant or germane material. These are clearly possible conclusions.

7 It is submitted by learned Counsel for the Appellants that there are no particulars given by the contesting Defendants in their written statement as to the particular portions of properties which were in respective possession and occupation of Plaintiff No.1 and his family, and Defendant No.1 and his family. It is submitted that consequently, there are no findings of the Courts below as to the respective physical possession and occupation of the parties. The written statement filed by Defendant No.1 clearly avers not only partition of the suit properties in the year 1984, but separate occupation of the suit properties by the branches of the family from the year 1984. It is claimed in paragraph-7 of the written statement that Gat No.886 was divided equally between Plaintiff No.1 and Defendant No.1 into two equal portions, where both branches had constructed their independent houses. It is also submitted in paragraph-7 that Gat No.868 was also divided equally between the parties, and Plaintiff No.1 and

Defendant No.1 were in separate possession and occupation of the divided portions. As for Gat No.879, it is submitted that the property was North-South and divided into equal portions, the southern half portion going to Defendant No.1, whilst the northern half portion being held by Plaintiff No.1 and each being in separate occupation and possession of the respective portions. As for Gat No.882 also, it is claimed that the same was divided equally in two portions, each of Plaintiff No.1 and Defendant No.1 being in separate possession of one portion. Paragraph-7 further deals with Gat Nos.568, 598 and 652 forming part of the suit properties. It is submitted that Gat No.568 is North-South plot, of which, one half portion on the eastern side was given to Defendant No.1, whereas one half portion on the western side was given to Plaintiff No.1 and they were in separate occupation of these portions. It is also claimed that Gat No.598 was separately given to the Plaintiffs, whereas Gat No.652 was separately given to Defendant No.1 in the course of the partition. Gat No.666 was said to contain the ancestral house, which was shared by the Plaintiffs and Defendants commonly.

8 Evidence was led by the contesting Defendants before the Trial Court on the partition of 1984. Defendant No.2 examined himself and supported the contesting Defendants' case. The Defendants also examined one *pancha* witness, who was present at the time of the partition in the year 1984, who also gave some details of the partition. It is observed by the Trial Court that this witness supported the version of the contesting Defendants in material particulars. Plaintiff No.2 examined himself before the Trial Court in support of the Plaintiffs' case. The Plaintiff's cross examination indicates an admission on his part that there was a partition

between his father, i.e. Plaintiff No.1, and Defendant No.1 in the year 1984 and that after such partition, they were in separate possession of their respective shares.

9 On going through the pleadings of the parties and their respective evidence tendered by them, the Trial Court came to a conclusion that there was no temporary family arrangement as suggested by the Plaintiffs in respect of the suit properties, but that there was a prior partition as of 1984, whereafter the parties separately occupied their respective portions of properties. The Trial Court held that the only dispute practically between the parties appeared to be in respect of Gat No.879, which was abutting Talegaon Nhavra Road. Whereas it was the case of the Plaintiffs that they were allotted the south-west portion in the family arrangement, it was the case of the contesting Defendants that the land was divided North-South, and Plaintiff No.1 and Defendant No.1 were, respectively, given the Northern and Southern portions in partition. The Trial Court held that the Plaintiffs had not proved that the South-West portion was allotted to them by way of temporary family arrangement, observing that there was no evidence in this behalf tendered by the Plaintiffs. The Trial Court accordingly came to the conclusion that there was prior partition of the suit properties and the Plaintiffs had no case either for declaration or for partition claimed by them. As I have noted above, these findings were endorsed by the lower Appellate Court on the basis of analysis of pleadings and evidence of the parties, and no substantial question of law arises from these findings.

10 Learned Counsel for the Appellants further submits that the shares of the mother and sisters of Plaintiff No.1 and Defendant No.1 are not determined by the Courts below. In this behalf, it is pertinent to note that it was the Plaintiffs' own case that one half share of the suit properties belongs to the branch of Plaintiff No.1, that is to say, Plaintiff No.1 and his two sons and two wives, whereas the other one half portion belongs to the branch of Defendant No.1. None of the other parties, including the mother or the daughters has come in appeal or has filed cross objection before the lower Appellate Court. Infact from the written statement of the daughters, it is clear that they were supporting the Plaintiffs' case, namely, that Plaintiff No.1 and his family had one half share in the suit properties. There is, accordingly, no error of law even in this behalf.

11 There is no merit, accordingly, in the Second Appeal. In the premises, the Second Appeal is dismissed. No order as to costs.

12 In view of the dismissal of the second appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)