

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

**SECOND APPEAL NO.401 OF 2015
WITH
CIVIL APPLICATION NO.911 OF 2015**

Shri Dinesh Dhirajlal Thakkar (Tanna) ... Appellant

Versus

Shri Harilal Parabhudas Thakkar (Tanna)

And Others ... Respondents

.....

Mr. Parag M. Tilak for the Appellant.

Dr. Birendera Saraf a/w Mr. Rohan Sawant and Mr. Hiarshil Parekh i/b
M/s Purnanand & Co., for Respondent No1 and 12.

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CORAM : S.C.GUPTE, J.

DATE : 9 JANUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2 The Appellant, who is the original Plaintiff, has filed the present suit for partition of the suit property and declaration of his separate share in it. The suit property consists of a building known "Krishna Building". It is the case of the Appellant that the Appellant's grandfather, late Shri Prabhudas Nanji Thakkar ("Prabhudas"), formed a joint and undivided Hindu Family between himself and his three sons, who are Defendant Nos.1, 5 and 8 to the present suit. The Appellant, who is the son of Defendant No.8, has filed the present suit for division of the joint family property claiming his share through late Prabhudas. There is a concurrent finding of fact by the two Courts below that the property, namely, Krishna Building, was

purchased by the deceased Prabhudas and his three sons as partners of M/s Harilal Prabhudas & Co., by a sale deed dated 23 June 1956. Both Courts have come to the conclusion that as partners of M/s Harilal Prabhudas & Co., late Prabhudas and his three sons were co-owners of the property, each having $\frac{1}{4}$ share of the same. It is further held by the Courts below that $\frac{1}{4}$ share of late Prabhudas was bequeathed by him in favour of Respondent No.1 (original Defendant No.1) alongwith the former's share in the business of the firm, whereas Respondent No.5 and Respondent No.8, the other two sons of late Prabhudas (Respondent No.8 being the father of the Appellant) had alienated their respective $\frac{1}{4}$ shares, respectively, in favour of Respondent No.1 and his wife Lilavati Thakkar (Respondent No.12). These are clearly findings of fact. The findings are based on evidence, and arrived at after considering all relevant documents and circumstances on record. No substantial question of law arises in respect of these findings.

3 Learned Counsel for the Appellant submits that there is a confusion between two firms, namely, M/s Prabhudas Nanji & Co., on one hand, and M/s Harilal Prabhudas & Co., on the other hand, insofar as the impugned judgment of the Appellate Court is concerned. It is submitted that it was the case of the Defendants in the suit that the firm of M/s Prabhudas Nanji & Co., was the purchaser of Krishna Building, whereas the Appellate court has come to the conclusion that it was the firm of M/s Harilal Prabhudas & Co. who was the purchaser of the property. In either case, whether it is M/s Prabhudas Nanji & Co. or M/s Harilal Prabhudas & Co., who was the purchaser of the property, the Appellant has failed to make out his case of the property being a joint family property or his succeeding to $\frac{1}{4}$ share of

late Prabhudas in the property. Besides, the conclusion that it is late Prabhudas and his three sons (Defendant Nos.1, 5 and 8), who were purchasers of the suit property as partners of M/s Harilal Prabhudas & Co., is a conclusion of fact and not open to be assailed in a Second Appeal on the ground of failure to appreciate evidence. The conclusion does not give rise to any substantial question of law.

4 There is, accordingly, no merit in the Second Appeal, and the same is dismissed.

5 In view of the dismissal of the Second Appeal, Civil Application No.911 of 2015 does not survive, and the same is also dismissed.

6 No order as to costs.

(S.C.GUPTE, J.)