

Sequeira

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

***SECOND APPEAL NO.384 OF 2015
Along with
CIVIL APPLICATION NO.1070 OF 2014***

Shri Popat Rambhau Thorat & ors. .. Appellants

Vs

Shri Rambhau Dhondiba Thorat & ors. .. Respondents

Mr.Jaydeep Deo, for Appellants / Applicants.

Mr.Kuldeep Patil, for Respondent No.3.

Coram : N.M.Jamdar, J.

Date : 12 April 2017.

Oral order :

The Appellants have challenged the concurrent judgments and orders passed by the learned Civil Judge, Ghodnadi, Shirur dismissing the Regular Civil Suit No.102 of 2006 of the Appellants and the order dated 5 December 2013 passed by the learned District Judge, Pune dismissing the Appeal.

2. The Suit was filed by the Appellants for partition of the property bearing Application No.736 situated at village Jambur, taluka Shirur, district Pune. The learned Civil Judge dismissed the Suit by Judgment and order dated 17 July 2009 holding that the Suit is barred by principles of res-judicata and all the joint family

properties were not included. An Appeal was filed by the Appellants bearing No.585 of 2009 was dismissed by the learned District Judge, Pune by judgment and order dated 5 December 2013.

3. In respect of the very same property, the Appellants had filed a Regular Civil Suit No.28 of 2002. This property was sold by Defendant No.1, the husband of the Plaintiff No.3 and father of Plaintiff No.1 and 2 to the Respondent No.3 herein. The sale deed was sought to be set aside. It was held in that Suit that the Sale deed was validly executed however, it was not binding on the shares of the Appellants. Both the Courts in the present case took note of the decision in the earlier Regular Civil Suit No.28 of 2002 filed for cancellation of the sale deed and the fact that the Appellants did not claim relief for partition and the separate possession in the earlier suit.

4. When the present Suit was filed, the Defendant No.1 did not appear and the Suit which proceeded exparte against him. The appellate Court confirmed the finding of the learned Civil Judge and in addition held that all the joint family properties, such as house and the other properties were not included in the Suit and no partition thereof was sought even though there was no partition in respect of these properties.

5. Heard learned counsel for the parties.

6. The manner in which the present suit is filed seeking partition of only one property that too, which was sold to the Defendant No.1 as far back as on 4 November 1999, and the non-contest by the Defendant No.1 in the present suit clearly goes to show that the Appellants are only trying to reopen the issue regarding the sale deed which stands concluded by the decision in the earlier Suit. Both the Courts were not in error in holding so.

7. As far as the inclusion of the other joint family properties is concerned, the Appellants were never wanting to include the same in the Suit and seek partition thereof. The Appellants had ample opportunity to do so yet, they have deliberately chosen not to include these properties.

8. In these circumstances, no question of law arises in this Second Appeal. The Second Appeal is dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)