

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.715 OF 2015
WITH
CIVIL APPLICATION NO.1542 OF 2015

Pandurang Bhikoba Khatate

..Appellant/
Orig.Defendant

-Versus-

Deepak Ramchandra Khatate & Ors.

.. Respondents

Mr. Joel Carlos for appellant/applicant

Mr. S.V.Sadavarte for respondent Nos. 1 to 4

CORAM : N.M. JAMDAR, J.

DATE : 19th April 2017.

ORAL ORDER:-

1] This second appeal has been filed by the original defendant in the suit filed by the plaintiff for declaration, partition and perpetual injunction. The respondent plaintiff filed a suit bearing No.1973 of 2012 in the court of Civil Judge, Senior Division, Pune seeking partition of some of the properties which, according to the respondent – plaintiff were ancestral properties. The learned Civil Judge, Senior Division upheld the contention of the respondent – plaintiff and held that the properties were ancestral properties and

the defendants had failed to prove that there was any partition of the properties in the year 1985. Learned Civil Judge held that the respondent plaintiff proved that the sale deed executed on 23rd December 1999 was null and void. The suit was accordingly decreed by judgement and order dated 2nd November 2012. The appeal bearing No.30 of 2013 was dismissed by the learned District Judge, Pune on 21st January 2015.

2] Learned Counsel for the appellant submitted that there was previous partition of the suit property and the defendant No.6 had also sold the properties pursuant to the sale deed. This submission cannot be accepted. Both the courts have held that suit properties are ancestral properties. After considering the evidence on record, both the courts have held that the deceased Bhikoba was Karta of the joint family and he purchased the said properties on behalf of joint family. Both the courts held that there was a nucleus for purchase of lands. After considering the evidence, both the courts held that since the nucleus existed, the burden had shifted upon the appellants to demonstrate that the property was self acquired property of Bhikoba. The decision of the learned District Judge

would show that the sole argument that was advanced was that the suit property was self acquired property of Bhikoba.

3] Once the suit property is held to be a joint family property, the appellant including the purchasers, had to show that either the property was self acquired or that there was a previous partition. On both counts the appellants have failed to lead cogent evidence. There is nothing in evidence that there was either an earlier partition nor any evidence to show that the properties were acquired by Bhikoba out of his own funds.

4] In these circumstances, no substantial question of law arises. Second appeal is accordingly dismissed. Civil application, if any, is disposed of. Ad-interim order dated 7th April 2016 to continue for a period of ten weeks from today.

(N.M.JAMDAR, J.)