

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.282 OF 1995
WITH
CIVIL APPLICATION NO.2910 OF 1995
WITH
CIVIL APPLICATION NO.635 OF 2002

Yasin Nuruddin Shaikh

Age : 59 years, Occ.: Service,

Residing at Anjangaon, Taluka Baramati,

Dist. Pune and at SRP Camp Group No.7,

Daund, Dist. Pune

.... Appellant
(Original Defendant)

Vs.

1 Parishabi Mard Nuruddin Shaikh
(Since deceased)

.... Deleted as per Addl.
Registrar order dated
7/2/2007 in CA No.
1799 of 2006

2 Husen Nuruddin Shaikh,
Age : 49 years, Occ. : Service

3 Sunnabi Gyasuddin Dange
Age : 47 years, Occ.: Household

4 Gulshabi Nurmohammed Pathan
Age : 53 years, Occ.: Household

Nos. 1 and 2 Residing at Anjangaon,
Taluka Baramati, Dist. Pune,

No. 3 Residing at Pathansha Mala,
Medad Road, Baramati, Dist. Pune.

No. 4 Residing: C/o Nurmohammed
Rajikhan Pathan,
Ambika Oil Mills Compound,
Gomatipura, Darwaja Bazar,
Prince Metal Work, Ahmedabad

.... Respondents
(Original Plaintiffs)

Mr. P.B. Shah for the Appellant/Applicants in both CAs.
Mr. Kedar Lad i/b Mr. Sushant Prabhune for Respondent Nos.2 and 3.

Coram : **N.M. Jamdar, J.**

Date : 20 April 2017

ORAL JUDGMENT :

This is a Second Appeal filed by the original defendant in the suit filed by Respondents-Plaintiffs for partition of the properties.

2 The dispute concerns two properties: gat No.126 and second 141, situated at Village Man, Taluka Baramati, District Pune. The Respondents-Plaintiffs filed a Regular Civil Suit No. 604 of 1987 seeking partition of the suit property. According to the Respondents-Plaintiffs, both the properties were of the joint family and they were entitled to a share in them. The Civil Judge, Junior Division, Baramati decreed the suit by the judgment and order dtd. 28 January 1991. The plaintiffs were declared to have shares in the suit property. However,

their prayer for injunction was dismissed. The Appellant filed an Appeal No. 20 of 1991 in the Court of learned District Judge, Baramati. The learned District Judge, by the judgment and order dated 10 February 1995 dismissed the appeal and declared the individual shares, with some modifications.

3 By order dated 15 June 1995, the Second Appeal was admitted on the questions of law mentioned in the grounds CC, V, T, R and Q of the Appeal Memo. In substance, the questions so framed relate to the rights of the Appellant to the suit property and the contention of the Appellant that the said properties were self acquired properties.

4 Heard the Learned Counsel for the parties.

5 As stated earlier, the dispute relates to two properties i.e. gat No. 126 and gat No. 141. As far as gat no.126 is concerned, it was the claim of the Appellant that this property was mortgaged by Nuruddin Shaikh, father of the Appellant and in the year 1958, it was redeemed by the Appellant. Since the Appellant was basing his claim on redemption of the mortgage to claim the property as self acquired, the burden was on the Appellant to prove the same. Both the Courts, after assessment of evidence, found that the Appellant did not produce any cogent evidence to show that the mortgage was redeemed. The Courts

also held that even assuming mortgage was redeemed by the Appellant alone, merely because the mortgage is redeemed, it cannot be straight-away presumed that it was self acquired property of the Appellant, as the mortgage could have been redeemed for the benefit of the joint family. Mr. Shah, the Learned Counsel for the Appellant has not been able to show as to how this finding of fact is perverse.

6 The second property is gat no. 141. Mr. Shah contended that though this property was initially a joint family property, it was sold by the mother of the Appellant when the Appellant was a minor and the Collector had re-allotted the land in the name of the Appellant. He submitted that the Purchaser had instituted a suit for damages, in which the Appellant alone was made a party, which was decreed and the damages have been paid by the Appellant. He submitted that the Respondents have not been able to show that they had any ability to pay the damages.

7 These arguments have been dealt with by the Courts. In the written statement, as well as before the Collector, the Appellant had categorically admitted that gat no. 141 was a joint family property. Having admitted so, the burden was on the Appellant to demonstrate as to how the joint family property became his self acquired property. It has come on record that the property was re-allotted to the Appellant because of the provisions of the Bombay Prevention of the

Fragmentation and Consolidation Act, 1947. Therefore, the property of the joint family, which was sought to be sold in contravention of the rights of one its member, simply came back to the joint family. The damages which were to be paid to the Purchaser were to the tune of Rs.450/-, out of which the Appellant could only demonstrate that he paid Rs.180/-. The Appellant could not produce any evidence as regards the remaining amount of Rs.270/-. It was contended by Mr. Shah that the Respondents have admitted that they had no source to pay the balance amount. However, the burden was on the Appellant in view of his claim that the property was converted into self acquired property. It is he who must demonstrate that he paid the entire amount of damages and that converted the property, which he had admitted to be a joint family, to his self acquired property. Therefore the finding rendered by both the Courts that the Appellant did not pay the damages to the Purchaser, cannot be faulted. Thus, there is no perversity in the finding that gat no.141 was not a self acquired property of the Appellant.

8 That being the position, both the Courts have rightly granted partition in the suit property and allotted shares to the family members. The questions of law framed will have to be answered against the Appellant. The Second Appeal is accordingly dismissed. No order as to costs.

9 In view of dismissal of the Second Appeal, the Civil Applications do not survive, the same are accordingly disposed off.

10 At this stage, the learned counsel for the Appellant seeks continuation of the interim order operating in this appeal. The interim order of stay of the execution proceedings, is extended for a period of twelve weeks from today.

(N.M. Jamdar, J)