

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.362 OF 2013

Smt. Indumati Balasaheb Khandare
since deceased through legal heirs
Balasaheb Gangadhar Khandare & Ors. ..Appellants

-Versus-

Sudhakar Babu Kore since deceased
through L.rs. Smt. Sushila Sudhakar
Kore and Ors. ..Respondents

Mr. Amit Sale for appellants
Mr.S.S.Patwardhan for respondent Nos. 2 and 3.

CORAM : N.M. JAMDAR, J.
DATE : 19th April 2017.

ORAL ORDER:-

1] The appellant has filed a special civil suit No.191 of 1999 in the court of Civil Judge, Senior Division, Sangli seeking partition of the property situate at village Palus, Dist. Sangli. The appellant sought half share in the property and also sought declaration that the sale deed executed between the defendant No.1 and defendant Nos. 2 and 3 be held as not binding on the share of the appellant. The suit property consisted of agricultural land and house property.

2] Learned Civil Judge dismissed the claim of the appellant as regards the partition and separate possession and held that the sale

deed executed by defendant No.1 in favour of defendant Nos. 2 and 3 was not binding on the share of the appellant. The appellant, thereafter, filed a Regular Civil Appeal No.80 of 2006, which was dismissed by the learned District Judge by the judgement and order dated 9th April 2013.

3] Heard the learned Counsel for the parties. Learned Counsel for the appellant submitted that the only reason given by the learned Civil Judge against the appellant is that the appellant did not include the other properties i.e. S.No.495/1-C and 142-A/1A+1A/3E.

4] Learned Counsel submitted that this objection was not raised by the defendants and, therefore, it could not have been held against the appellant. Learned Counsel also submitted that since these two properties were sold long time back, they could not have been included in the suit and partially partition could be sought. Learned Counsel submitted that the learned Dist. Judge has not considered this aspect, though raised by the appellant. Learned Counsel for the respondent Nos. 2 and 3 the Purchasers, submitted that the appellant has given no reason why the properties which

were sold earlier be stand on the same footing as of the respondent Nos. 2 and 3 and be not included. It is clear from the written statement filed by the defendant No.1 that the suit is filed only to resile away from the sale of the suit land and it is not a genuine suit for partition.

5] When the suit was filed by the appellant the written statement filed by the defendant shows that the defendant No.1 has virtually agreed with all the contentions of the plaintiff and has even averred that the sale deed be set aside.

6] Both the courts have non suited the appellant on the ground that non joinder of parties. Though it is permissible not to seek partition of all properties, as rightly held by the learned Civil Judge, there must be some reason for this course of action is adopted, since for equitable partition all properties must be taken into consideration and the share be allotted accordingly.

7] The only reason that is given not to include other properties is that they were sold long time back and the present property was

sold only one month before the suit was filed. For equitable partition, the fact that joint family property was existed and it were sold needs to be considered to arrive at equitable distribution. After the learned Civil Judge held against the appellant on that count, the appellant could have taken remedial steps. In the appeal, the manner in which the defendant No.1 has filed his written statement, the manner in which other properties have been deliberately kept out of common hotch potch supports reasoning and finding of both the courts that the suit is not filed for partition of the properties and the partition of only the suit property which is sold could not have been sought.

8] As far as house property is concerned, the appellant being married daughter has been held to have no right to claim partition but only right to reside.

9] There is no error in the conclusion reached by both the courts. In these circumstances, no question of law arises. Second appeal is accordingly dismissed.

(N.M.JAMDAR, J.)