IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.608 OF 2016
WITH
CIVIL APPLICATION NO.1825 OF 2015
IN
SECOND APPEAL NO.608 OF 2016

Kashinath Mawanji Bhoir …Appellant
vs.
Shantaram Ganpat Sipai & 5 Ors. …Respondents

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Mr. R.V. Sankpal, i/b. R.V. Sankpal & Associates, for the Appellant.

Mr. Nitin Gangal, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED : 7 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order passed by District Court at Thane in Civil Appeal No.433 of 2012. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein and confirmed the decree passed by the Civil Judge, Junior Division, Wada, District Thane. The judgment and decree of the Trial Court decreed the Respondents' (Original Plaintiffs') suit for partition, holding them to have ½ share in the suit properties, the other ½ share being held by the Appellant (Original Defendant). The decree orders partition of the property after declaring

the respective shares of the parties.

3. Both courts below have come to a concurrent finding of fact that the suit property was the self acquired property of the deceased Mawanji Bhoir, the father of the parties (the parties being brother and sister). The suit properties were acquired by late Mawanji as a deemed purchaser under the Bombay Tenancy and Agricultural Lands Act.

4. The only issue of law raised in the present Second Appeal concerns the share of a daughter under Section 6 of the amended Hindu Succession Act in case of the succession to the estate opening prior to the Amendment Act of 2005. It is important to note that this is not a case where the courts below have come to the conclusion that the property was an ancestral property. The property was a self acquired property of the deceased father. A daughter acquires same right as that of a son in such property as per the Hindu Succession Act, 1956, both before and after its amendment in 2005. Under that provision, as it always stood, the daughter is entitled to an equal share as that of a son in the property of the deceased father.

5. Learned Counsel for the Appellant submits that, in addition to this ground, there is also the issue as to whether the suit property belonged to the deceased father. It is submitted that the suit property was actually purchased by the Appellant herein (Original Defendant) under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. In the first place, it does not appear that this plea was raised before the first Appellate Court. The impugned judgment and order of

the first Appellate Court does not disclose any such plea. In any event, such plea is ex-facie untenable. In any event, as I have noted above, the question of the ownership of Mawanji, the father of the parties, is a pure question of fact and it is answered by concurrent findings in favour of the Respondents. No question of law arises from these findings.

6. The Second Appeal is, accordingly, dismissed. No order as to costs.

7. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also dismissed.

(S.C. GUPTE, J.)