

Sequeira

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

SECOND APPEAL NO. 293 OF 2017

Shri Kamlakar Madhukar Patil .. Appellant

Vs

Smt.Dhanibai Madhukar Patil and ors. .. Respondents

Ms.Mugdha Patil, for the Appellant / Applicant.

Coram : N.M.Jamdar, J.

Date : 18 April 2017.

Oral Order :

Heard learned counsel for the Appellant.

2. The Appellant-Plaintiff has challenged the judgment and order dated 4 May 2012 passed by the learned Civil Judge, Alibag partly decreeing the Suit No.153 of 2006 and the judgment and order dated 7 July 2016 passed by the learned District Judge, Raigad-Alibag dismissing the Regular Civil Appeal No.260 of 2012.

3. The dispute relates to two properties. One, an agricultural land No.141, second, a house property. It is the case of the Appellant that the Respondents-Defendants unauthorisedly partitioned the properties on 15 January 2004, which included these two properties belonging to the Appellant which were his self-acquired properties.

4. As far as the agricultural land block no.141 is concerned, it stood in the name of the father of the parties as a tenant. Upon his death, names of all the parties i.e. Appellant and the Respondents were included in the records. Upon death of the father, rights accrued to all the parties. The name of the Appellant was mentioned as a manager, in the records as the Respondent-brothers were minor at that time. Therefore, even if the Appellant paid the purchase price it could not have been held that he did so in his own right and not on behalf of the joint family. The finding recorded by both the Courts that land block No.141 belongs to joint family, cannot be said to be perverse.

5. As far as the house property, the property stands in the name of Defendant No.1. The nucleus in the form of agricultural land was available and therefore, burden was on the Appellant to show that he purchased the properties from his own independent funds. Both the Courts have held that the Appellant failed to do so by leading cogent evidence in that regard. In the assessment record also the name of Defendant No.1 appears.

6. In these circumstances, the conclusion of both the Courts that the properties in question were not self-acquired properties of the Appellant cannot be said to be illegal or perverse. No question of law arises. Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)