

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

**SECOND APPEAL NO.937 OF 2016
WITH
CIVIL APPLICATION NO.660 OF 2016**

Shri Govind Shripati Gaiwad ... Appellant/Applicant
Versus

Shri Dagadu Bapu Tawade ... Respondent

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Mr. Sachin Chavan for the Appellant/Applicant.

Mr. S.S. Koregave for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 8 MARCH 2017

P.C. :

. This second appeal challenges a judgment and order passed by the District Court at Kolhapur. By this judgment and order, the District Court allowed the appeal filed by the Appellant herein and modified the judgment and decree passed by the Trial Court. By this modification, the Respondent's (original Plaintiff's) suit was decreed and a partition was allowed, holding the Plaintiff to be entitled to one half undivided share of the suit plot. The Trial Court had also passed a similar decree of partition and possession of one half share of the Plaintiff in the suit property. The decree of the Trial Court, however, contained a direction to allot eastern portion of the suit plot to the Plaintiff, whilst effecting the partition. This part of the decree of the Trial Court was modified by the Lower Appellate Court deleting the particular direction. The Appellant (original Defendant) is aggrieved by this order. It is his case that he is a joint holder of the suit

property along with one Sunil Powar and the sale deed in respect of one half share of Sunil Powar under which the Plaintiffs claims, was not valid, legal and binding.

2 The suit involves two aspects : first, whether the original Plaintiff had acquired one half share in the suit property through his vendor Sunil Powar and second, whether he should be allotted eastern portion of the suit plot in the partition since it was that portion which was dealt with by his vendor Sunil Powar, by the subject sale deed. Both Courts came to a concurrent finding that Sunil Powar had one half share in the suit property, the other half being held by the Defendant. Both Courts also came to a concurrent finding that the sale deed by which Sunil Powar transferred his one half share of the suit property in favour of the Plaintiff, was valid. Both Courts, however, deferred on the question, as to whether Sunil Powar was within his right to deal with eastern portion of the suit plot specifically by the subject sale deed. The Trial Court came to a conclusion that he could do so, since he was actually in possession of the eastern portion of the suit plot, whilst the Defendant was in possession of the western portion. The First Appellate Court, however, found that there was no partition of the suit plot between the Defendant and Sunil Powar and in the premises, each had one half undivided share in the suit plot and that accordingly, Sunil Powar was not within his right to deal with the eastern portion of the suit plot exclusively. The second part of the order is not the subject matter of the present second appeal, since in any event it is only the Plaintiff who could have a grievance in respect of the same. The Plaintiff has not come in appeal from that portion of the order. The present second appeal is concerned only with the preliminary decree of partition

granted by the Courts below in favour of the Plaintiff.

3 From the records, it emerges that there could not possibly be any serious dispute between the parties as to the joint ownership of the suit plot of the Defendant and Sunil Powar. There is a registered sale deed dated 14 September 1988 executed by the vendors, namely, Dattatray Balavant Kulkarni and Gopal Narahar Kulkarni, in respect of the suit plot, in favour of the Defendant and Sunil Powar as purchasers. Whether they were such joint purchasers is a question of fact and both Courts below having come to a unanimous finding that they were such joint purchasers, no substantial question of law arises in connection therewith, particularly, in the face of the registered documents, which support the Plaintiff's case.

4 The Defendant having no connection with the one half portion which was dealt with by Sunil Powar in favour of the Plaintiff and Sunil Powar himself having no objection to the sale deed (Sunil Powar is not even a party to the present suit), it hardly lies in the mouth of the Defendant to contest the registered sale deed executed by Sunil Powar in favour of the Plaintiff in respect of the former's one half share in the suit plot. Thus, the declaration of one half share of the Plaintiff and a preliminary decree of partition ordered by the Courts below cannot be faulted. No substantial question of law arises in connection therewith.

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

6 In view of the dismissal of the second appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)