

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 706 OF 2015
WITH
CIVIL APPLICATION NO.15895 OF 2015
IN SA/706/2015

SUBHASH GORAKH PATIL (SHINDE)
VERSUS
DHUDKU DASHRATH PATIL (SHINDE) LRS BHIKAN DHUDKU PATIL
(SHINDE) AND ANOTHER

...
Advocate for the Appellant : Shri Brahme Shailesh P.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th March, 2018

Per Court:

1 The Appellant is aggrieved by the judgment and decree dated 18.09.2015 delivered by the learned Principal District Judge, Dhule by which, RCA No.50/2010 filed by the Appellant/ original Defendant has been partly allowed.

2 The operative part of the order dated 26.03.2010 passed by the Trial Court in RCS No.39/2005 reads as under :-

- "1. *The suit is partly decreed with costs.*
2. *The defendant to handover the possession of the suit house i.e. Grampanchayat House No.1023 admeasuring 12 x 60 feet situated at village Kusumba, Taluka and District Dhule to the Plaintiff.*
3. *There shall be enquiry in to future mesne profit under Order 20 Rule 12 of Code of Civil Procedure.*

4. *Rest of the prayer of the suit is dismissed.*
5. *Decree be drawn up accordingly."*

3 The operative part of the impugned judgment of the Appellate Court dated 18.09.2015 reads as under :-

- "1. *The appeal is partly allowed.*
2. *The decree of learned trial court is modified as under:
 The appellant-defendant No.1 shall handover possession of half of the suit house i.e. House No.1023 admeasuring 12 x 60 feet situated in Pardeshi Lane of village Kusumba, by effecting partition with the help of Court Commissioner.*
3. *The remaining part of the decree passed by learned trial court is confirmed.*
4. *Parties to bear their own costs."*

4 I have considered the strenuous submissions of Shri Brahme, learned Advocate for the Appellant. He has drawn my attention to the eight grounds formulated by him in the memo of the appeal. He has drawn my attention to the observations of the Appellate Court and the evidence on record.

5 Dashrath Dhudku Patil is the father of the original Plaintiff/ Dhudku Dashrath Patil. The original Defendant/ Appellant herein (Subhash Gorakh Patil) is the nephew of the Plaintiff. The brother of the Plaintiff is the father of the Defendant.

6 The original Plaintiff/ Dhudku approached the Trial Court by filing RCS No.39/2005 alleging that the house property which was the

suit property bearing Gram Panchayat House No.1023 admeasuring 12 x 50 feet, was owned by him. He was residing at Surat on account of his professional requirement. His nephew/ Subhash, who is a retired serviceman, was permitted to occupy the said house as it was not in use. He surreptitiously facilitated the passing of the resolution by the Gram Panchayat in his favour declaring him to be the owner of the said house.

7 Gorakh Dasharath and Dhudku Dasharath are the real biological brothers and biological sons of Dasharath Patil. The partition had taken place between the two brothers with regard to the agricultural lands. Dhudku Dasharath claims that the said house property was purchased by him. Subhash claims that as the house property is ancestral property, his father Gorakh and uncle Dhudku got equal shares in the house property and subsequently, Subhash purchased the remainder half share of Dhudku and thus, became the exclusive owner and possessor of the suit property. The agreement for such sale was alleged to have been signed on 09.03.2000 for a consideration amount of Rs.40,000/-.

8 The Trial Court was convinced that the Plaintiff was the exclusive owner of the house property and hence, directed the Defendant to handover the possession of the entire house property. Being aggrieved, the Defendant approached the Appellate Court by preferring RCA No.50/2010 and partly succeeded when the Appellate Court directed that the Plaintiff and the Defendant would be entitled to an equal share in the

house property. It was directed that the said partition would take place with the assistance of the Court Commissioner.

9 I have considered the observations of the Appellate Court from paragraph 14 onwards in which, the Appellate Court has considered the evidence available before it, threadbare. Neither the Plaintiff nor the Defendant could establish any purchase with regard to the house property. In short, Dhudku could not prove that the house property was purchased by him and it is a self acquired property. The Defendant could not prove that he had purchased half share of the house property from Dhudku and had thus, become the exclusive owner of the property. The Appellate Court, on the basis of the oral and documentary evidence before it, concluded that the house property was an ancestral property and therefore, the two brothers (Dhudku and Gorakh) would be entitled to equal shares in the house property as they are the biological sons of Dashrath, and had inherited the said ancestral property.

10 Considering the above, I do not find that this appeal involves any substantial question of law. This Second Appeal being devoid of merit is, therefore, dismissed.

11 The pending Civil Application would not survive and stands disposed of.