

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

**SECOND APPEAL NO. 639 OF 2016
WITH
CIVIL APPLICATION NO. 1295 OF 2016
IN
SECOND APPEAL NO. 639 OF 2016**

Channappa Sharanappa Bake (since
deceased through legal heirs) :

Gaurshankar Channappa Bake & Ors.

....Appellants

V/s.

Shardabai Bhimashankar Fundipalle & Ors.

....Respondents

Mr. A.B. Tajane for the appellants/applicants.

None for the respondents.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 17TH DECEMBER, 2018.**

P.C.:

. The appellants herein have challenged the judgment and decree dated 06/12/2016 whereby the Principal District Judge, Solapur has dismissed the Regular Civil Appeal No.9/2014 and thus confirmed the judgment and decree dated 03/12/2013 passed by the 4th Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.577/2009.

2. Heard Mr.A.B. Tajane, learned counsel for the appellants. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The respondents herein were the plaintiffs and the appellants were the defendants in the suit and shall be hereinafter referred to as 'the plaintiffs' and 'the defendants' respectively.

4. The dispute in the suit was in respect of the property under Gat No.175 admeasuring 04 hectares 07 R situated at Aherwadi, Taluka South Solapur. The plaintiffs claims that the suit property was an ancestral property of the plaintiffs and the defendants that as per the family arrangement, they are possessing separate portion of the suit property. The grievance of the plaintiffs is that the defendant nos.1 and 2 had tried to take forcible possession of the suit property which was in their possession. The plaintiffs therefore filed a suit for partition.

5. The defendants have admitted that the suit property is an ancestral property. The defendants have admitted that as per the family arrangement, the plaintiffs are in possession of the eastern part of the land and that they are in possession of the western portion of the land. They claimed that the plaintiffs are liable to pay half share of the outstanding electricity bill. They further stated that their predecessors, Sharnappa and Bappanna had taken loan for the family

and that the plaintiffs are liable to pay their share towards repayment of the loan.

6. Based on the aforesaid pleadings, issues were framed. Both parties adduced evidence and the learned Trial Judge, after considering the evidence on record held that the suit property is an ancestral property and that the plaintiffs were entitled to half share of the property. The learned Trial Judge further directed the plaintiffs to pay half share of the outstanding electricity bill. The learned Trial Judge recorded the finding that the plaintiffs were not liable to pay any amount towards repayment of loan.

7. The defendants challenged this judgment and decree before the District Court at Solapur. The learned District Judge, upon considering the evidence adduced by the respective parties, dismissed the appeal. Being aggrieved by the impugned judgment, the defendants had filed this Second Appeal under section 100 of Civil Procedure Code.

8. Mr. A.B. Tajane, learned counsel for the appellants submits that despite there being no cross objection, the learned District Judge has set aside the part of the order whereby the learned Trial Court had

directed the plaintiffs to pay half share towards outstanding electricity bill. He further contends that the Courts below had not considered the plea raised by the plaintiffs that there was an oral partition. Both these submissions have no merits. In fact, in paragraph 9 of the impugned judgment, the First Appellate Court has categorically observed that the plaintiffs had not raised any cross objection as regards the direction to pay half share of the electricity bill and that the decree to that extent has attained finality. A perusal of the impugned judgment also reveals that the challenge before the District Court was restricted to the payment of loan amount. The District Court has held that the loan was not taken for the family and hence the plaintiff was not liable to pay half share. The finding of facts, recorded by the Courts below are based on the evidence adduced by the Trial Court. The findings of facts are neither perverse nor illegal. The Appeal does not involve any substantial question of law and is accordingly dismissed.

9. Civil Applications stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)