

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

**SECOND APPEAL NO.498 OF 2015  
with  
CIVIL APPLICATION NO.1069 OF 2015**

Bhimrao Tukaram Yaadav & Ors. ... Appellants

Vs.

Ramchandra Tukaram Yadav ... Respondent

Mr.Sandesh D. Patil for the Appellants  
Mr.U.R. Mankapure for Respondent No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: APRIL 9, 2018**

**P.C. :**

1. This Second Appeal is directed against the judgment and order dated 26.11.2014 of the learned District Judge 2, Islampur, thereby partly allowing the Regular Civil Appeal No.42 of 2008.

The facts of the case are as under:

Respondent No.1 and appellant No.1 are the real brothers. Respondent No.1, who is the original plaintiff, has filed the suit bearing Suit No.27 of 2001 for partition, declaration and perpetual injunction against the appellant-brother and appellant Nos.2 and 3, who are the original defendants, as they are the purchasers of the

suit property. (for the sake of brevity, the parties will be addressed by their original status as 'plaintiff' and 'defendants') The suit property is gat No.169 which is an agricultural land with house. The appellants / defendants appeared in the suit; filed their written statements and contested the suit. Both the parties produced documentary evidence and tendered oral evidence by examining their respective witnesses. It is the case of the plaintiff that on 1.11.1985 that this land was purchased from one Sajabai in the name of appellant No.1 i.e., defendant No.1 as a part of the joint family property. However, the plaintiff is in possession of the said land and is cultivating the land on batai basis prior to the sale and purchase of the land. The defendants contested that the partition had taken place in 1957 and he has purchased the suit flat out of his self acquired income, so it is exclusively owned by him and it is not a joint family property. It is the case of the defendant No.1 that he had sold the suit land to defendant Nos.2 and 3 by a registered sale deed on 16.12.1999 and, therefore, the suit should fail. The plaintiff examined Sajabai and also one Sharad Patil, who supported the case of the plaintiff that he is in possession of the suit property. Defendant Nos.1 and 2 entered in the box. One Balaram Patil, who was an attesting witness to the sale deed of

16.12.1999, was examined by the defendants. After considering the evidence, the trial Court has dismissed the Suit No.27 of 2001 by judgment and order dated 17.3.2008. The said judgment was challenged by the plaintiff in Regular Civil Appeal No.42 of 2008. The learned District Judge, Islampur, reassessed the entire evidence of the witnesses and the parties so also the documents produced herewith and set aside and modified the said judgment and decree of the trial Court mainly on the point of injunction. The first appellate Court has in fact confirmed the judgment and order of the trial Court on the point of partition and declaration and only granted relief on the point of injunction against which this Second Appeal is preferred.

2. Heard submissions of the learned Counsel for both the sides. Perused the judgments and the record and evidence placed before this Court. It appears that all the issues on the point of determination are discussed in detail. The first Appellate Court has taken a correct view of holding that the plaintiff is cultivating the land in the name of his real brother i.e., appellant No.1, who is the original defendant No.1. The first appellate Court has rightly appreciated the evidence of Sajabai and Sharad Patil on the point

of possession and cultivation of the plaintiff. The learned Judge has also taken into account the admission given by DW Balaram Patil, who was an attesting witness on the sale deed dated 16.12.1999, that the plaintiff is in possession and cultivating gat No.169. He has also admitted that appellant No.1 / defendant No.1 is permanently residing at Mumbai, however, the plaintiff is in possession of the land.

3. After going through the submissions and the record, I am of the view that no substantial question of law is made out and hence, the appeal is dismissed. The judgment and decree passed by the first appellate Court dated 16.12.1999 is hereby confirmed.

4. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same also stands dismissed.

**(MRIDULA BHATKAR, J.)**