

Sequeira

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

SECOND APPEAL NO. 658 OF 2015

Mr.Prabhakar Ramchandra Rane .. Appellant
Vs
Mr.Vinayak Bala Rane and others .. Respondents

Mr.Abhay D.Parab, for the Petitioner.

***Coram : N.M.Jamdar, J.
Date : 15 January 2018.***

Oral Order :

By this Second Appeal, the original Plaintiff -Appellant, is challenging the order passed by the learned Principal District Judge, Sindhudurg dated 10 December 2014.

2. The Appellant-Plaintiff filed Regular Civil Suit No.124 of 2010 in the Court of Civil Judge Junior Division, Malwan for partition of the suit property, which is a residential house. According to the Appellant-Plaintiff, the suit property was ancestral joint family property of the Appellant-Plaintiff and Defendant No.1 to 6. It was their contention that even through the name of predecessors of Defendants were recorded in the Gram panchayat record, the property was a joint family property and the Appellant-Plaintiff had

a share in the same. The learned Civil Judge by the judgment and decree dated 26 March 2013 accepted the contentions of the Appellant and granted one half share in the suit property. Regular Civil Appeal No.91 of 2013 filed by the Respondent-Defendant, which was allowed by the learned District Judge by the impugned Judgment and Order dated 10 December 2014.

3. On the date when the suit was instituted, the name of predecessors of the Respondents-Defendants appeared in the suit property. If it was the contention of the Appellant-Plaintiff that the property was a joint family property then, initial burden was upon the Plaintiff to demonstrate existence of joint family and existence of nucleus, from which the property could be purchased. Upon these factors being established, the burden would shift to the member of the joint family claiming the property as self-acquired. The learned Civil Judge directly placed the burden on the Respondents to demonstrate that the property was self-acquired property and concentrated on the factum of entries in revenue record. In appeal, the learned District Judge rightly noted that the Appellant-Plaintiff admitted in the cross-examination that he could not produce any documentary evidence to show that the property was a joint family property. There was some dispute regarding the entries in the revenue record, however, the main issue was regarding the nature of the property. Since there was no evidence led by the Appellant on this primary facet of the matter, the learned District Judge rightly

held that the property could not be held to be ancestral and joint family property and therefore, could not be partitioned. There is no error in the view taken by the learned District Judge, Sindhudurg on the basis of evidence before the Court. No substantial question of law arises. Second appeal is accordingly dismissed.

(N.M.Jamdar, J.)