

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

SECOND APPEAL NO.849 of 2017 with
CIVIL APPLICATION NO.1752 OF 2014

Gopinath Mahadu Vahile & ors ... Appellants

vs

Baban Gopinath Vahile & ors ... Respondents

Mr.Drupad S.Patil for Appellants
None for Respondents

CORAM: A.M.DHAVALA, J

DATE: 16th OCTOBER 2018

P.C.

Heard Advocate Mr.Drupad Patil for the appellants,
who are father, one brother of the plaintiff (respondent no.1).

2. Respondent no.1 had filed Regular Civil Suit No.95 of 1999 against his father, three brothers and his son, claiming that there was a partition in the joint family property and the suit property was allotted to him through the proceedings under section 85 of the Land Revenue Code. He claimed that the defendants were threatening to disturb his possession hence, he claimed perpetual injunction to restrain them from disturbing his possession.

3. The appellant-defendants admitted that there was a proceeding before the Tahsildar under section 85 of the Maharashtra Land Revenue Code, 1966 and a partition of the joint family properties was executed and the said land was allotted to the plaintiff but, they claim that it was merely a show. In fact, in order to avoid acquisitions for Bhama Akshad Project the partition was shown. Actually, the suit properties are enjoyed by the joint family, jointly. The defendants filed appeal and Civil Application No.795 of 2005 which came to be dismissed with costs.

4. Present Second Appeal is filed by the legal heir of father-Gopinath and defendant no.2 Narayan, brother of the plaintiff. He submitted that in the First Appeal, it is the duty of the appellate Court to consider all the facts and re-appreciate them and record a finding on each issue separately. It has not been done and in a cryptic manner, the appeal has been disposed of.

5. The defence of the defendants that they have approached the competent authorities for effecting a fake partition, in order to overcome the provisions of law, is not legal

and tenable. Learned First appellate Court in its judgment has recorded admission of defendant no.1 in paragraph 22. The defendant no.1 has admitted that the proceeding was initiated before the Tahsildar, Khed under section 85 of the Maharashtra Land Revenue Code, 1966 and a partition was affected with consent of the parties. It was given effect to by way of mutation and 7/12 extracts. It has been acted upon. There are separate 7/12 extracts of various shares of the plaintiff, his father and his brothers. It is axiomatic, that if Baban receives any property in above partition, it will be ancestral property of Baban and his brothers and therefore, he cannot file a suit for injunction against his son Kailash but, Kailash has not preferred any appeal.

6. In the light of the admitted facts and admitted pleadings, I find that the findings of the learned trial Judge that the plaintiff is the exclusive owner of the property allotted to him in partition, affected by Tahsildar to which defendant nos.1 to 4 were parties, is unassailable. It is a pure question of facts. There is no perversity in the findings of both the Courts nor any admissible immaterial is ignored or any immaterial material is considered.

The contention that the first appellate Court has not followed its duties expected of him in re-appreciating the entire evidence, has no force. The Ist appellate court has given points and given reasons. Even if it is assumed that the judgment of the first appellate Court is not disclosing detail reasonings, in the appreciation, at the most it could have been a question of law but, not substantial question of law. No point has been raised which could tilt the decision as against the concurrent findings recorded against the appellant.

7. Hence, the Second Appeal deserves to be dismissed in-limine. It is accordingly dismissed. Civil Application if any, stands disposed.

{A.M.DHAVAL, J}

