

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.410 OF 2012
ALONG WITH
CIVIL APPLICATION NO.779 OF 2012
AND
CIVIL APPLICATION NO.1174 OF 2017

Hanmant Namdeo Kirdat	 Appellant-Applicant
V/s.	
Gangubai Laxman Kirdat & Ors.	 Respondents

Mr. Manoj A. Patil for the Appellant-Applicant.

Mr. Anilkumar Patil for Respondent No.1.

Mr. Ashish Pawar for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH JULY 2018.

P.C. :

1. Heard Mr. Manoj Patil, learned counsel for the Appellant, Mr. Anilkumar Patil, learned counsel for Respondent No.1, and Mr. Ashish Pawar, learned counsel for Respondent No.2.

2. By this Second Appeal, the Appellant-Original Defendant No.1 is challenging the 'Judgment and Decree' dated 7th December 2011 passed by the Principal District Judge, Satara, in Regular Civil Appeal No.214 of 2007, against the 'Judgment and Decree' dated 29th June 2007 of Civil Judge, Junior Division, Satara in Regular Civil Suit No.18 of 2004.

3. The said Suit was filed by Respondent No.1 herein claiming partition and separate possession of her share in the suit properties, which are claimed to be the ancestral joint family properties. It is the case of Respondent No.1 that, her father-in-law "Kondiba" was the common ancestor. He has died in the year 1961, leaving behind him three sons by name Laxman, Ramchandra and Namdeo. Respondent No.1 is the widow of Laxman. Ramchandra and Namdeo died, respectively, in 1999 and 1972.

4. As per the case of the Appellant, the partition has taken place in 1967 itself and mutation entry to that effect was made bearing No.7355 in the year 1975 and since then, the parties were in separate possession. Whereas, as per the case of Respondent No.1, she was not allotted any share in the said partition and hence, she was constrained to file the Suit. The Trial Court and the Appellate Court, both, had decreed her Suit and it is submitted and admitted at bar that, now she is put in separate possession of her share in execution of the partition decree.

5. The three-fold submissions are advanced by learned counsel for the Appellant to challenge the said partition decree. In the first place, it is submitted that, if the partition has taken place between Ramchandra and Namdeo in the year 1975 itself, then, the Suit is barred by limitation. However, as rightly held by both the Courts below, as and

when partition of her share was demanded by Respondent No.1 and it was refused, the cause of action arose for the Suit of partition and as she has filed the Suit thereafter within the stipulated period, her Suit is within limitation.

6. The second contention raised is that, some of the properties of “Kondiba” were the tenanted properties and hence, in view of the provisions of Section 40 of the Bombay Tenancy and Agricultural Lands Act, 1948, she cannot get share therein. However, this contention is also devoid of merits, considering that under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, “Kondiba” was the protected tenant therein and after his death, all his legal heirs become entitled to get share in the suit properties.

7. As regards the third submission that Respondent No.1 has become owner by way of adverse possession, the less said is better. Respondent No.1 being the co-owner of the suit property, her possession being of a co-owner, Appellant cannot claim adverse possession over the suit properties, without proving the ouster.

8. The Second Appeal, therefore, is devoid of merits and hence stands dismissed.

9. In view of the above, Civil Application Nos.779 of 2012 and 1174 of 2017, pending in the present Second Appeal, do not survive and the same stand disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]