

Sequeira

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

***SECOND APPEAL NO. 71 OF 2014
Along with
CIVIL APPLICATION NO. 747 OF 2008***

Ms.Bhikabai Murlidhar Thete
Deceased

2. Shri Sakharam Murlidhar Thete
(Since deceased through his
Legal heirs and representatives

2-A. Shri Kamalakar Sakharam
Thete and another.

.. Appellants

Vs

Mr.Mahadu Baban Thete
(Since deceased through his
Legal heirs and representatives

1-B. Mr.Eknath Mahadu Thete and others .. Respondents

Mr.Suresh Sabrad, for Appellants.

Mr.P.N.Joshi, for Respondent No.1-B.

Coram : N.M.Jamdar, J.

Date : 22 January 2018.

Oral Order :

The Appellants are the heirs of the original Defendant No.1.
The Respondent-Plaintiff filed a suit for seeking partition of the suit
properties i.e fields Block Nos.46 and 44 situated at Rapli, taluka

Chandwad and suit fields bearing Survey Nos.49/3 and 49/9 situated at Vakdardi, taluka Chandwad. The suit was partly decreed and the learned Civil Judge, by judgment order dated 7 February 1998 only directed the Defendant Nos.1A to 1C to pay the amount of Rs.6000/- with interest and the relief of partition and possession sought by the Respondent -Plaintiff, was rejected. In the suit, the Defendant no 2 brother of the Plaintiff accepted the case of the Plaintiff that there was no partition in the family and entered into a compromise.

2. An appeal was filed bearing No.141 of 2005 by the original Plaintiff . The learned District Judge Nashik, by judgment and order dated 1 December 2007 allowed the appeal. The Appeal filed by Defendant No.1A to 1E challenging the decree regarding the payment of amount was dismissed. The learned District Judge accordingly directed that the properties be partitioned and shares be allotted. The learned District Judge held that the Plaintiff- Defendant Nos.1A to 1EE and Defendant No.2 are entitled to 1/3rd share in the property.

3. Heard the learned counsel for the parties.

4. The properties are admittedly ancestral properties. Therefore once the suit was filed for partition and the theory of oral partition was put forth by Appellants, both the Courts placed the burden of proving the oral partition upon the Appellants. The learned Civil

Judge primarily relied upon statement given by the Plaintiff in a Criminal case filed under Section 145 of the Indian Evidence Act 1872 wherein, according to the learned Civil Judge, the Plaintiff gave admissions that there was a partition of the suit property. The learned counsel for the Appellants has relied upon this reasoning of the learned Civil Judge. The learned District Judge held that the Plaintiff was not confronted with the deposition in the Criminal proceedings as required under section 145 of the Indian Evidence Act 1872 and there were admissions on the part of the Appellants.

5. Section 145 of the Indian Evidence Act requires that the attention of the witness has to be drawn to the statement made by the witness in the proceedings by producing the same in the cross examination and confronting him with that particular portion giving the witness an opportunity to explain. Therefore there is no error in the view taken by learned District Judge that there was breach of Section 145 of the Indian Evidence Act.

6. Apart from this position, if the evidence adduced by the Appellants is seen in totality, there is no evidence of partition at all. Appellants are contending that there was an oral partition in the year 1947, however admitted that they were residing jointly thereafter. Witnesses examined by the Appellants have given various admissions and have not been able to show that they had any personal knowledge nor any cogent evidence thereafter has been led. The arguments advanced by the learned counsel for the Appellants

amount to re-appreciation of evidence. Whether there was an oral partition or not ,is a question of fact. All pieces of evidence have been correctly assessed by the learned District Judge and conclusions have been correctly drawn. No question of law arises. Second appeal is accordingly dismissed. Civil application stands disposed of.

(N.M.Jamdar, J.)