

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 566 OF 2017

Pandurang Dagdu Lohar ...Appellant

Versus

Vimal Rajaram Lohar & Ors ...Respondents

Mr. Abdul Karim N. Mulla, for the Appellant.
Mr. Dilip Bodake, for Respondents Nos.1 to 3.

CORAM: N. M. JAMDAR, J
DATED: 24 JANUARY, 2018

Oral Order:-

1. The Appellant – original Defendant has challenged the judgment and order passed by the Civil Judge, Junior Division, Medha, dated 6 October, 2004 and the judgment and order passed by the learned District Judge, Satara, dated 7 September, 2007. By the impugned judgments and orders, the Suit filed by the Respondents – Plaintiffs for injunction restraining the Appellant from causing obstruction to the southern side half portion of the suit land, has been decreed.
2. The Appeal was filed in the year 2009, and after condoning the delay it has renumbered as of the year 2017.
3. Heard the learned Counsel for the parties.

4. The learned Counsel for the Appellant submitted that there is no evidence of partition and the Respondents – Plaintiffs ought to have been instituted a Suit for partition and could not ask for simplisitor injunction. The learned Counsel for the Respondents has drawn my attention to the paragraph 11 of the decision of the District Court. In this paragraph, the learned District Judge has noted the submissions made by the Advocate for the Appellant, that there is no dispute that Dagadu and deceased Kondiba were having $\frac{1}{2}$ share and partition took place between the parties in the year 1970. The learned Counsel for the Appellant orally contended that this is an incorrect recording in the judgment. No attempt has been made to get the impugned order corrected, which was passed in the year 2007. Therefore, in view of the stand of the Appellant, as recorded in the impugned order, that there is no merit in the contrary oral submission advanced in this Court.

5. The learned Counsel for the Appellant then submitted that a relinquishment is permissible and deceased Kondiba, had relinquished his share in favour of the Appellant by filing an affidavit. There is no dispute that deceased Kondiba had $\frac{1}{2}$ share and that the Respondents – Plaintiffs succeeded to it. If they are to be deprived of this share on the ground that deceased Kondiba had relinquished his share in favour of the Appellant, instead of his daughters, the Appellant has to produce cogent

proof. Both the Courts on assessment of evidence did not find any cogent material produced on record. This is a finding of fact. The so-called relinquishment deed is not registered. It is not that even otherwise than the relinquishment, the Appellant was due to receive a share. Therefore, if the relinquishment has not been proved, then there is no perversity in the view taken by both the Courts looking at the state of evidence that was produced. Merely because revenue entries continued in the name of the Appellant, it does not confer any right on the Appellant. In the present facts and circumstances of the case, the transfer of ownership claimed was not legally valid. Thus no fault can be found in the view taken by both the Courts that the Respondents – Plaintiffs are entitled for an order of injunction. No question of law arises. Second Appeal is accordingly dismissed.

[N. M. JAMDAR, J.]