

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

SECOND APPEAL st. NO.27017 OF 2015

Smt.Rangubai Ramchandra Shelar & Ors. ... Appellants

Vs.

Shri Dagadoba Shankar Shelar & Ors. ... Respondents

Ms.Manjiri Parasnis for the Appellants
Mr.S.V. Pitre, for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 20, 2018**

P.C. :

1. Learned Counsel for the Respondent submits that pursuant to the order dated 9.3.2018, the appellant was directed to pay an amount of Rs.5,000/- within a week from the date of the order. On this condition, the delay of 335 days was condoned. However, the learned Counsel makes a statement that the costs of Rs.5,000/-, which should have been paid till 16.3.2018, are not paid till today and hence, the Second Appeal be dismissed.
2. Learned Counsel for the appellant submits that the appellant will pay the costs today itself. The statement of the learned Counsel for the appellant is accepted.

3. As a short question is involved in the appeal, with the consent of the parties, the Appeal is taken up for final hearing at the stage of admission itself.

4. This Second Appeal is directed against the judgment and decree dated 7.10.2014 passed by the learned District Judge 3, Pune, dismissing the Civil Appeal No.756 of 2012 and the Cross Objections filed therein by defendant Nos.1 to 8 and thus, confirming the judgment and decree dated 27.3.2008 passed by the learned 4th Joint Civil Judge, Senior Division, Pune, in Special Civil Suit No.1978 of 2006 thereby dismissing the suit filed by the appellants / plaintiffs.

5. The learned Counsel for the appellants/plaintiffs has submitted that the plaintiffs filed the suit against the defendants for partition and allotment of their common 1/3 share in the suit properties. She submitted that 3 sons, namely, Dagadoba and Dnyanoba inherited the ancestral property from Shankar Khandu Shelar. The children of Ramchandra are the plaintiffs, who claimed partition from the legal representatives of Dagadoba and Dnyanoba, who are the defendants. Some of the defendants i.e.,

the children of Dnyanoba have supported the case of the plaintiffs and thus, the legal representatives of Dagadoba are the only contesting parties.

6. The learned Counsel for the appellants has submitted that the trial Court and the first appellate court have erred in appreciating the evidence on the point of partition of the properties. She submitted that it is the case of the plaintiffs that there was no partition of the properties and whatever partition which took place in 1973, it was just a family arrangement. She has submitted that the learned Judge of the Courts below have failed to appreciate the fact that by mutation No.1464 which has taken place on 14.3.1973 at exhibit 67, became owners of the property i.e., of Survey No.64, out of which the plaintiffs got 1 acre 8 gunthas while the contesting defendants got the share of 2 acres and 22 guntahs. Thus, she submitted that the fact proved unequal distribution of the ancestral property and this itself is a ground to reopen the so called family arrangement. Thus, the learned Counsel formulated the following substantial question of law:

Whether the trial Court and the first Appellate court have committed error in holding that there was a partition in the year 1973 though there was unequal distribution of the properties by way of family arrangements?

7. Per contra, the learned Counsel for the respondents pointed out that in the year 1973, partition has taken place and pursuant to the said partition, mutation entry was made at No.1464 in the Record of Rights and the property had fallen to the respective shares of the plaintiffs and the contesting defendants. The learned Counsel has supported the judgment of the trial Court as well as the first Appellate Court on the aspect of positive finding given on the point of partition. He further pointed out that the appellants have acted upon the partition and have disposed of the property which has fallen to their share. He argued that there are subsequent events of disposal of this property, which is to be taken into account, which supports the decisions of the first appellate Court and the trial Court. The learned Counsel submits that on 17.10.2014, the first appellate Court dismissed the appeal. On 26.6.2015, the appellants entered into development agreement with some third party in respect of the suit property i.e., the land at Survey No.64 hissa No.3.

8. He further relied on the affidavit filed by Shantaram i.e., respondent/defendant No.4 on 13.12.2017 in this Second Appeal,

wherein he has produced a copy of the said development agreement which was entered into by the appellants/plaintiffs with the Developer on 26.6.2015. He pointed out that in this agreement, in para 7, it is admitted that they have received 64/3 by way of partition which was effected on 14.4.1973. So also, in para 4(b), the plaintiffs have made declaration that no litigation or legal proceedings are pending in the Courts of law in respect of the suit land i.e., 64/3. Thereafter, the appellants filed this Second Appeal.

9. Read both the judgments. Considered the record placed before this Court and the submissions of the learned Counsel for both the sides. The claim of the unequal distribution of the property as a family arrangement is a matter of fact. On that point, the appellants/plaintiffs have not tendered sufficient evidence. Both the trial Court and the appellate Court discussed the evidence on the point of fact of partition and the mutation entry No.1464. The Courts below have rightly accepted and held that there was a partition in the year 1973 of the ancestral property of the plaintiffs and the defendants, pursuant to which, the mutation entry No.1464 was carried out. I do not find any substantial question of law in this case.

10. It is true that by pointing out unequal distribution, the family arrangement can be reopened. However, there should be sufficient evidence on record and moreover, if the fact of partition is proved by the other side, then, the evidence is required to be weighed and the suit can be decided accordingly. In the present case, no such evidence is found. The trial Court and the subordinate Court have taken a correct view. No substantial question of law can be formulated and hence, the Second Appeal is dismissed.

(MRIDULA BHATKAR, J.)