

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 739 of 2017
[Smt. Nanibai Mahadeo Thengane & others Vs. Diwana Gosai
Thengane & others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Ms. Kirti Satpute, Adv., for the appellants.
Mr. H. V. Thakur, Adv., for respondents.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 20th February, 2018

The original defendants in the suit for partition and separate possession that has been decreed by the trial Court and which judgment has been affirmed by the appellate Court have filed this Second Appeal.

According to the plaintiff, one Gosai was the common ancestor having two sons, i.e., the plaintiff and the predecessor of defendant nos. 1 to 5 - Mahadev. He also had two daughters who were defendant nos. 6 and 7. Said Gosai expired on 15th January, 1991. The sons of Mahadev were in possession of agricultural lands, while the ancestral house was in possession of the plaintiff. The plaintiff was also in possession of a tractor-trolley. As the demand of the plaintiff for partitioning

the suit properties was not accepted by the defendant nos. 1 to 5, the aforesaid suit came to be filed. After the death of Gosai, an oral partition took place between the plaintiff and Mahadev. According to defendant nos. 1 to 5, the suit house that was in possession of the plaintiff was allotted to him. Similarly, the tractor-trolley purchased in the year 1987 was given to the share of the plaintiff. Rest of the lands were given to the share of Mahadev. On considering the evidence led by the parties, the trial Court held that the oral partition as pleaded by the defendant nos. 1 to 5 was not proved. It, therefore, decreed the suit and partitioned the suit properties. The appellate Court has confirmed this decree.

Ms. Satpute, learned counsel for the appellants, submitted that the both the Courts did not appreciate the evidence on record in its proper perspective. Various admissions of the plaintiff have not been given due weightage. The evidence on record indicates that the suit house as well as the tractor-trolley were allotted to the share of the plaintiff. It was admitted by the plaintiff that the value of the tractor-trolley was much more than the value of the agricultural lands. According to her, if the various admissions of the plaintiff were given their due weightage, the suit was liable to be dismissed. The oral partition, in fact, had been duly proved. In support of her submissions, the learned counsel placed reliance on the decisions in **[1] Parvati**

Vishwanath Zangare & others Vs. Rasul Sk. Abdul Musalman [2014 (2) Mh.L.J. 457], **[2] Union of India Vs. Ibrahim Uddin & another** [(2012) 8 SCC 148], and **[3] Vimal Chand Ghevarchand Jain & others Vs. Ramakant Eknath Jadoo** [2009 (5) Mh.L.J. 597].

Per contra, Shri H. V. Thakur, learned counsel for the respondent no.1, supported the impugned judgment. According to him, both the Courts rightly found that the evidence led by defendant nos. 1 to 5 did not support their stand. The evidence of DW 1 and DW 2 was not consistent, inasmuch as there was a discrepancy with regard to the presence of defendant nos. 6 and 7 when the alleged oral partition took place. No reply was sent by the said defendants to the notice issued by plaintiff. Other documentary evidence on record also did not indicate the oral partition, as pleaded.

After hearing the learned counsel for the parties and after perusing the material on record, I find that both the Courts have rightly held that the alleged oral partition was not proved by the defendant nos. 1 to 5. In support of that conclusion, it was found that the evidence on record brought by the defendants was inconsistent. While DW 1 had stated that defendant nos. 6 and 7 were not present when the oral partition between the plaintiff and Mahadev took place, DW 2 has stated that said defendants were present when the oral partition took place. It was then found that the oral

partition as alleged was inequitable in view of the fact that the tractor-trolley had been purchased by obtaining a loan which was to be repaid. It was not expected that the plaintiff would have accepted the said tractor-trolley along with the liability of repayment of the loan. The 7/12 extracts at Exhs. 35 to 38 showed the names of the plaintiff as well as defendant nos. 1 to 7 as co-sharers of the agricultural lands. With this evidence on record, the only conclusion that could be drawn was that the oral partition as alleged was not proved. This conclusion has been rightly drawn by the trial Court and affirmed by the first appellate Court.

After examining the evidence on record in the light of the ratio of the decisions relied upon by the learned counsel for the appellants, it cannot be said that the findings recorded by both the Courts are in any manner perverse. The correct legal inference has been drawn from the evidence on record. The admissions sought to be relied upon by the appellants are not of such a nature that could prove the alleged oral partition.

In view of aforesaid, I do not find that the Second Appeal gives rise to any substantial question of law. The same is, therefore, dismissed with no order as to costs.

Judge

