

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.749 of 2017
(Chandrabhan Laxaman Yadao and others. .vs. Satyanarayan Nannu Yadav
and others.)

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

Mr. Mahesh Rai, Advocate for Appellants.
Mr. C.A. Joshi, Advocate for Respondent Nos. 1,2 & 3

CORAM : Manish Pitale, J.
DATED : May 4, 2018.

By this appeal, the appellants (original defendants) are seeking to challenge concurrent findings rendered by the two Courts below, while granting decree of partition and separate possession on a suit filed by the respondents (original plaintiffs).

2. The family of the parties to this litigation consisted of one Madhav whose wife was Doojabai (original defendant No.4). They had two sons Laxman and Nannu. The appellants are the children of the said Laxman while the respondents are the children of the said Nannu. It was the case of the respondents in the suit for partition filed by them that there were three properties consisting of one field and two house properties belonging to the joint family and that they were seeking partition of the said properties. The appellants took a stand that one of the house properties was the self acquired property of their predecessor Laxman and that the field was in the name of their

grandmother Doojabai. It was contended that the said house property which they claimed to be the self acquired property of Laxman and the field in the name of Doojabai could not be subject matter of partition.

3. On the basis of the pleadings of the parties, issues were framed by the trial Court and evidence was recorded. Since it was the specific stand of the appellants (original defendants) that one of the house properties was self acquired property of their predecessor Laxman, the burden was entirely on them to prove the same. The trial Court took into consideration the entire oral and documentary evidence on record and it found that the burden was not discharged by the appellants herein. On the other hand, it was found that documents in the form of earlier litigation were placed on record on behalf of the respondents, which demonstrated that Laxman himself had stated in the written statement in the aforesaid earlier litigation that he along with Nannu were joint owners of the said house property.

4. On the basis of such oral and documentary evidence on record, the trial Court came to the conclusion that the three properties made subject matter of the suit were joint family properties and accordingly it decreed the suit, holding that the plaintiffs were entitled to get $1/3^{\text{rd}}$ share in the field property and that they were entitled to $1/2$ share in the house properties.

5. Aggrieved by the same, the appellants filed first appeal before the District Court, being Regular Civil Appeal No. 23 of 2012. By the impugned judgment and order, the said appellate Court has dismissed the appeal and confirmed the findings of the trial Court, but, it has modified the decree as Doojabai (original defendant No.4) had expired during the pendency of the appeal. By exercising powers under Order 41 Rule 33 of the Civil Procedure Code, 1908, the appellate Court has modified the decree of the trial Court to the extent that the original plaintiffs and defendants would be entitled to $\frac{1}{2}$ share each in the landed property as well as the house property.

6. Aggrieved by the same, the appellants/original defendants have filed this appeal. Mr. Mahesh Rai, learned counsel appearing on behalf of the appellants, has submitted that there was sufficient evidence on record, particularly in the form of evidence of sister of Laxman, to show that one of the house properties was indeed the self acquired property of Laxman and that the field was owned by Doojabai. On this basis, it has been contended that the decree passed by the trial Court and as modified by the appellate Court was not sustainable.

7. On the other hand, Mr. C.A. Joshi, learned counsel appearing on behalf of the respondent Nos.1 to 3 (original plaintiffs) has pointed out that the concurrent findings rendered by the two Courts below are based on proper appreciation of the oral and

documentary evidence on record and that there is no perversity in the said findings. It has been pointed out that there was sufficient documentary evidence relied upon by the respondents to show that the properties in question were indeed joint family properties. The burden on the appellants was not discharged by them when they had come with a stand before the Court that one of the house properties was the self acquired property of Laxman.

8. A perusal of the impugned judgment and order as also that of the trial Court shows that the Courts below have taken into consideration the oral and documentary evidence on record in detail and upon an analysis of the same, they have come to findings to the effect that all the three properties were joint family properties, that could be made subject matter of partition as sought by the respondents. The evidence on record shows that the burden on the appellants was not discharged by them because there was nothing to show that one of the house properties was purchased by Laxman through his own earnings or that he had sufficient funds of his own to purchase the said house property. In fact, the documents pertaining to an earlier litigation wherein joint written statement was filed by Laxman and Nannu, demonstrated that Laxman himself conceded to the fact that both he and Nannu were jointly the owners of the said house property. Therefore, it cannot be said that the Courts below have committed any error in giving concurrent findings in this case. There is no perversity demonstrated by the appellants

and, therefore, there is no substantial question of law that arises for consideration of this Court. Accordingly, this appeal is dismissed. No order as to costs.

JUDGE

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