

DDR

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

**SECOND APPEAL NO. 479 OF 2016**

Balkrishna Gangaram Chavan ..Appellant  
vs.  
Shantaram Bhikaji Chavan & ors. ..Respondents

....  
Ms. Indrayani Koparkar for appellant.  
Mr. S.C. Mangle for respondents

....

**CORAM : M.S.KARNIK, J.**

**DATE : 18<sup>th</sup> JUNE, 2019**

**P.C. :**

Heard learned Counsel for the parties.

2. Learned Counsel for the appellant while challenging the orders passed by the Courts below submits that there is no dispute that the appellant (original plaintiff) and respondent Nos. 1 and 2 – original defendant Nos. 1 and 2 have 1/3<sup>rd</sup> share in the suit property.

3. Respondent No.1 is the real uncle of plaintiff whereas respondent No. 2 is cousin uncle of the plaintiff. It is

not in dispute that the suit house was in joint possession being their ancestral property. It appears that certain repairs were to be carried out. Learned Counsel for the appellant submitted that the appellant spent amount of Rs1,90,000/- for carrying out the repairs. It was agreed that the expenses will be shared by the appellant and the respondents, however, the respondents failed to pay their share of the repairs. The suit was therefore filed for recovery of amount of Rs.1,90,000/- or in the alternative for recovery of the possession on account of the failure on the part of the respondents to pay the appellant the expenses he incurred towards the repairs.

4. Learned Counsel for the appellant submitted that the Courts below are not justified in dismissing the suit only on the ground that the appellant could not produce any receipts on record indicating the expenses for repairs. Learned Counsel would submit that the respondents being close relatives of the appellant are staying in the same house and therefore it was orally agreed that the appellant would initially pay for the

repairs. She invited my attention to the deposition of the plaintiff to indicate that the respondents had to bear the cost of repairs to the extent of their share which they refused to pay.

5. Learned Counsel for the respondents invited my attention to the findings recorded by the Courts below. It is not in dispute that the property is joint family property. The appellant and respondent Nos. 1 and 2 have  $1/3^{\text{rd}}$  share each in the suit property. No receipts were produced on record to indicate the extent of expenditure incurred by the appellant. Moreover, from the evidence of the plaintiff, I find that it is the plaintiff's evidence that as the repair work progressed, the parties contributed money to the extent of their share.

6. I have gone through the concurrent findings recorded by the Courts below. The Courts have arrived at a finding of fact that the appellant could not prove that amount Rs.1,90,000/- has to be recovered from the respondents to the extent of their respective share.

7. In any event, merely on a claim that respondents failed to pay their share, can be no ground for the appellant to claim possession of the property from the respondents. I do not find any substantial question of law involved in this Appeal.

8. The Appeal is dismissed.

**(M.S.KARNIK, J.)**