

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

**SECOND APPEAL NO. 195 OF 2017
WITH
CIVIL APPLICATION NO. 982 OF 2016**

Sou.Rukmini Pandurang Kolekar	...Appellant
vs.	
Smt.Lata Vitthal Adsul & Ors. `	...Respondents

Mr.Sarthak S. Diwan for Appellant.
Mr.Yogesh V. Patil i/b. Vijay Patil for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 18 NOVEMBER 2019

P.C. :

Heard Counsel for the parties.

2 This second appeal challenges two concurrent judgments and decrees passed by the courts below. The subject matter of challenge before the courts below was the suit for partition filed by the Plaintiffs, who were step-sisters of Defendant No.1, who is the predecessor in interest and vendor of the Appellant (original Defendant No.4). The Plaintiff's suit was for partition and possession of their separate share. There is practically no dispute that the Plaintiffs were in fact entitled to one-half share of the property of deceased Dattu Sitaram Korade, who was a common ancestor of the Appellant's vendor, i.e. Defendant No.1, and the Plaintiffs. There is also no dispute that one-half share in the suit property belonged to Defendant No.1, the vendor of the Appellant. The controversy pertains to the case of the Appellant that there was already a partition effected in respect of the particular property of Dattu, namely, Gat No.361, and that an identified portion of that property represented one-half share of Defendant No.1, which was purchased by the Appellant. In support of such case, there is practically no evidence, save and except three mutation entries

relied upon by the Appellant herein. These entries show that there was mutation in respect of one-half share of deceased Dattu in respect of Gat No.361 first in favour of son Narayan and later in favour of Defendant No.1 (his grandson). The mutation entries showing devolution of one-half share of deceased Dattu first in favour of son Narayan and later in favour of Defendant No.1 do not make out a case of physical partition of property so as to identify any particular portion as the property devolved upon Defendant No.1, which could have been sold by him to the Appellant. Both courts below have, accordingly, come to a concurrent finding of the fact, and correctly so as we have noted above, that there was no physical partition of the suit property and the sale deed executed by Defendant No.1 was not binding on the Plaintiffs. Learned District Judge in the first appeal has correctly come to a conclusion that the Appellant (Defendant No.4) would, at the most, be entitled to equitable adjustment in general partition between the co-sharers and cannot oppose the decree of partition prayed for by the Plaintiff. There is, accordingly, no substantial question of law arising for consideration of this court. Accordingly, there is no merit in the second appeal. The second appeal is dismissed.

3 In view of the disposal of the second appeal, the civil application does not survive and is disposed of.

4 At the request of learned Counsel for the Appellant, the ad-interim stay of execution operating in respect of Gat No.361 in favour of his client is continued for a period of four weeks from today.

(S.C. GUPTE, J.)