

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

SECOND APPEAL NO.346 OF 2018

Shri Sandip Uttam Gujar and Ors. ... Appellants

Vs

Shri Dinkar Buva Jadhav & Ors. ... Respondents

...

Mr. Shah Kayval P. for the Appellants.

Mr. Dilip Bodake for the Respondent No.1.

Mr. Vaibhav Ramchandra Gaikwad For Respondent No.2.

CORAM : SANDEEP K. SHINDE J.

DATE : 11 JANUARY, 2019

P.C. :

Heard the learned counsel for the Parties.

2 *This Appeal is preferred by the Original Defendant Nos.1 to 9 against the judgment and decree passed by the District Judge, Satara in Regular Civil Appeal No.176 of 2014. The suit was filed by the Respondent No.1 herein for the partition in respect of land bearing Gat No.91 and 104. The trial Court dismissed the suit on the ground that suit property was partitioned 40 years before institution of the suit as could be seen and inferred from the conduct of the parties.*

3 The Appellate Court reversed the decree of the learned trial Court and hence, the Defendant Nos.1 to 9 have preferred this appeal. Mr. Shah the learned counsel appearing for the Appellants has invited my attention to the evidence of P.W.1 which the trial Court has referred to in the judgment in paragraphs 38, 41, 42 and 46. I have gone through the judgment of the trial Court. Plaintiff in his cross-examination in clear terms has admitted that since last 50 years he and his brother are residing separately and cultivating their lands separately. P.W.1 further admitted that in between himself and his brothers; Vasant, Sadashiv and Atmaram “Oral partition took place prior to 40 years (emphasis supplied)”. It further appears from his cross-examination that he had admitted that after his father's death, he and his brother separated and each of them have 1/4th share.

. The learned trial Judge thus, held that conduct of the parties to the suit for partition clearly indicates there was severance of status of joint family property and accordingly, decreed the suit.

4 The learned Appellate Court, however, held that the trial Court has committed an error by relying upon the stray admissions of the plaintiff in the cross-examination. It was further held by the appellate Court that the defendants who have come with the defence of earlier partition ought to have proved factum of partition by cogent and independent evidence.

5 After going through the evidence of P.W.1, in my view, admissions given by the plaintiff about the factum of early partition followed by the separation between brothers inter-se for cultivating suit lands is sufficient to hold that parties from their conduct had established that there was severance of status of joint family property.

6 Plaintiff asserted his exclusive possession in Gat No.91 on the basis of family arrangement and not partition. However, no evidence was adduced in support of it.

7 *Be that as it may, in my view, evidence of P.W.1 goes to the root of the matter to decide as to whether there was severance of status of the joint family property which according to me has not been appreciated and considered by the learned Appellate Court and, therefore, I admit the appeal on the following substantial question of law:*

“(A) Whether the learned District Judge was right in setting aside the judgment and decree of the trial Court, particularly when the Respondent No.1/Plaintiff has admitted in his deposition that Plaintiff and Defendants were cultivating their shares of the lands separately since more than 40 years which clearly establish that there was oral partition between the parties, though there is no document of partition between the parties by metes and bounds.

(B) Whether the learned District Judge was right in ignoring that the names of Plaintiff and Defendants were entered in the revenue record with their respective shares in the land as can be seen from the mutation entries and such mutation entries regarding factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the Defendants ?”

8 *Call records and proceedings.*

(SANDEEP K. SHINDE, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.316 OF 2018
IN
SECOND APPEAL NO.346 OF 2018**

Shri Sandip Uttam Gujar and Ors. ... Applicants
Vs
Shri Dinkar Buva Jadhav & Ors. ... Respondents
...
Mr. Shah Kayval P. for the Applicants.
Mr. Dilip Bodake for the Respondent No.1.
Mr. Vaibhav Ramchandra Gaikwad For Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : 11 JANUARY, 2019

P.C. :

Appeal is admitted on 11th January, 2019.

2 *The appellate Court has decreed the suit and directed the partition of the suit property. That since the Appeal is admitted on the substantial questions of law, judgment and decree dated 26th April, 2017 passed by the District Judge-2, Satara in Regular Civil Appeal No.176 of 2014 is hereby stayed.*

3 *It is further clarified that amount of Rs.1,92,019/- towards sugar-cane bill is deposited in the trial Court. The trial Court is directed to invest this amount in the fixed deposit in any nationalised bank initially for a period of three years and renew the same from time to time till the decision of this Second Appeal along with accrued interest thereon. For prayer clause (b), the applicants are at liberty to file separate application.*

(SANDEEP K. SHINDE, J.)

