

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

**SECOND APPEAL NO.408 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 793 OF 2016**

Balkrushna Gangaram Rane Appellant
(Ori. Plaintiff)

Vs.

Parshuram Vishnu Rane Respondent

Mr. Aniket P. Ranade for Appellant.

Coram : NITIN W. SAMBRE, J.

Date : 17th December 2019

P.C.:

1. The appellant-original plaintiff initiated suit being Regular Civil Suit No.14 of 2002 on the file of Civil Judge Junior Division, Devgad.

2. The suit came to be dismissed vide order dated 11th July, 2014 which was confirmed in a Regular Civil Appeal No.122 of 2014 vide order dated 31st July, 2015 by the District Judge-I, Oros. As such this Second Appeal.

3. Heard Mr. Ranade for the appellant.
4. According to Mr. Ranade, both the Courts below committed an error in failing to appreciate that non-disclosure of filing of suit for partition cannot be considered to the detriment of the appellant. He would also urge that the property, which is subject matter of the present appeal, is not subject matter of the partition suit and that being so, it is to be presumed that the appellant is in possession of the property and the same is a self acquired property. So as to substantiate his submissions, he would invite the attention of this Court to the mutation entries from 1954 onwards, so as to claim that the property was a self acquired property or else in partition has come to the share of the appellant.
5. Considered the submissions.
6. There are judgments of both the courts below to demonstrate that the suit property was initially owned by Sitabai Thakur.
7. It is not the case of the appellant that same was purchased from Sitabai Thakur. It appears that the appellant claimed to be remained in long standing possession of the same by relying upon the

revenue record. Entries in revenue record will not help the appellant as same is good for fiscal purpose.

8. While ascertaining the said fact, learned counsel for the appellant has failed to demonstrate as to what was the source of possession and whether suit property could be described as self acquired property.

9. The appellant has failed to discharge the onus.

10. Apart from the above, the fact remains that the appellant has failed to demonstrate that the suit was for partition and exclusion of the aforesaid property, was brought to the notice of the said Courts. Even if, it is presumed for the sake of argument that the appellant is in possession of the suit property, the factum of land being khot land and the non-joinder of Sitabai Thakur as a party to the suit dis-entitles him for the relief claimed.

11. In my opinion, concurrent findings are recorded by the Courts below. No interference is called for. The appeal is dismissed.

12. In view of dismissal of the Second Appeal, Civil Application No. 793 of 2016 does not survive. The same is accordingly disposed of.

(NITIN W. SAMBRE, J.)