

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

**SECOND APPEAL NO.44 OF 2016
WITH
CIVIL APPLICATION NO. 68 OF 2016**

Parutappa Sidramappa Madale Appellants
& Ors.

Vs.

Shrishail Sidramappa Madale Respondents
(since deceased) thru' Lrs.

Mr. Anand S. Kulkarni for Appellant in Second Appeal and for the
Applicant in Civil Application.

Mr. Shrishail Sakhare for Respondent 1(E).

Coram : NITIN W. SAMBRE, J.

Date : 17th December 2019

P.C.:

1. Heard.
2. The suit for partition initiated by the respondent being Special Civil Suit No. 96 of 2006, which was renumbered as Regular Civil Suit No. 868 of 2012 came to be decreed vide judgment and order dated 12th February 2013 confirmed in Civil Appeal No.139 of 2013 by the judgment and order passed by learned District Judge-3, Solapur. As such this Second Appeal.

3. The contention of the learned counsel for the appellant is, during the lifetime of father of the parties to the appeal, in 1983, partial partition was effected. Such partial partition is recognised in law. That being so, he would urge that only remaining property should have been sought partition of.

4. Learned counsel would draw support from judgment of the Hon'ble Apex Court in the matter of Apoorva Shantilal Shah HUF Vs. Commissioner of Income Tax, Gujarat-1, Ahmedabad, reported in (1983) 2 Supreme Court Cases, page 155. Learned counsel as such urge that in the suit, claim should have been considered excluding the property, which was subject partition in 1983 by way of family arrangement.

5. Learned counsel for the respondent-original plaintiff supports the judgment, as according to him, even if in the year 1983, the partition was effected, same cannot be held to be binding on the respondent. He sought dismissal.

6. Considered rival submissions.
7. Considering defence raised by the appellant, the learned trial Judge framed issue No. 2 casting burden on the appellant-defendant to prove that in the year 1983, joint family property being gat No. 20 was subjected to partition and answered the said issue in favour of the appellant-defendant.
8. As far as partial partition in 1983 of gat no. 20 is concerned, admittedly the respondent-plaintiff was not party to the same which was by way of family arrangement.
9. The aforesaid fact is also not disputed by the appellant before the Courts below or this Court.
10. As such, the Courts below proceeded to decree the suit.
11. The subject matter of partition being land gat no. 20 should have been excluded from the present partition suit, is the contention which is raised by the appellant relying on the judgement of Apoorva cited supra. However, this Court cannot forget that to the family arrangement of 1983, the respondent was not a party.

12. Even if it is presumed that there is partial partition, the appellant has failed to demonstrate how the said partial partition is binding on the respondent-plaintiff. The reliance placed on the judgment of Apoorva cited supra, as such on the aforesaid issue is misplaced.

13. In view of the concurrent findings recorded by the Courts below, there is no substance in the submissions. The appeal dismissed.

14. In view of dismissal of the Second Appeal, the Civil Application No. 68 of 2016 does not survive. The same is accordingly disposed of.

(NITIN W. SAMBRE, J.)