

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

**SECOND APPEAL STAMP NO.806 OF 2018
WITH
CIVIL APPLICATION NO. 333 OF 2018
AND
CIVIL APPLICATION NO. 334 OF 2018**

Vijay Balkrishna Hindalekar ... Appellant
Versus
Sridhar Gangaram Teli and others ... Respondents

.....
Mr. Amit Jamsandekar a/w Prabhakar Jadhav for the Appellant.
Mr. Bhushan Walimkbe for Respondent No.1b.
Mr. Sandeep Parikh i/b Veerdhaval Kakade for Respondent Nos.2
to 4.

.....

CORAM : SANDEEP K. SHINDE, J.
DATE : 06th FEBRUARY, 2019.

P. C.:

1. Heard learned Counsel for the parties.
2. Appellant was the defendant No.1 in Regular Civil Suit No.53 of 2002 filed by the respondents herein. It was the suit for perpetual injunction and in alternative for possession. The suit was decreed and the prohibitory injunction was issued against defendant Nos. 1 to 5. This decree was carried in Regular Civil Appeal No.78 of 2009. The appellate Court dismissed the appeal

by judgment and order dated 12th September, 2017. It is against the decree passed by the Appellate Court, this Second Appeal is preferred.

3. Both the Courts below have rendered the finding of fact that the defendants could not prove that their forefathers were members of a joint family and were holding possession of suit property jointly.

4. The learned Counsel for the appellant submits that in the suit for injunction the Court ought not to have cross boundaries of the suit and to decide the title of the plaintiffs qua suit property. On this count he has relied on the judgment of the Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and others reported in (2008) 4 SCC 594, wherein it is held that, 'whether there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.'

5. I have perused the judgment of the trial Court as well as the judgment of the Appellate Court. Both the Courts have not framed the issues and points for consideration, relating to the

title of the suit property. The findings recorded by the trial Court in respect of title, was an incidental in view of the assertions of their respective rights in the property. Thus, in my view the trial Court has not crossed the boundaries and therefore this contention is rejected.

6. Learned Counsel for the appellants submitted that a substantive suit for partition for the very property has been filed being Suit No.55 of 2005 and it is pending. The apprehension is that the finding on title in respect of suit property recorded in the present proceedings may foreclose their cause of action in the substantive suit for partition. In my view the apprehension is unfounded, because relevancy of finding in the present proceedings, while deciding the subsequent suit, the trial Court shall be governed by the provisions of Sections 40, 41, 42 and 43 of the Indian Evidence Act, 1872.

7. The Courts below have essentially rendered the finding of fact which is in my view does not give rise any substantial question of law. The appeal is therefore dismissed. In view of dismissal of Second Appeal, civil applications do not survive and are disposed of.

(SANDEEP K. SHINDE, J.)