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

**SECOND APPEAL NO.618 OF 2016
ALONGWITH
CIVIL APPLICATION NO.1028 OF 2016
IN
SECOND APPEAL NO.618 OF 2016**

Shri Ashok Rangnath Machale Appellant.

V/s

Kum Nilesh Ashok Machale and Others Respondents.

Mr. Manoj A. Patil for the Appellant.

Ms. Kruttika Pokale i/b Mr. Avinash M. Gokhale for Respondent Nos. 1
and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 16, 2019

P.C.:-

1] A suit for partition initiated by wife and son being RCS No.119 of 2006 came to be decreed on 27/2/2009 by Civil Judge, Junior Division, Ghodnadi, which is confirmed by the learned District Judge in Regular Civil Appeal No.280 of 2009 vide judgment and order dated 21/09/2012.

2] Mr. Patil, learned Counsel appearing on behalf of the Appellant, would urge that the judgment is not sustainable, particularly when factum of partition between father, brother and Appellant was not established. According to him, family arrangement cannot be treated as partition and that being so, both these judgments are liable to be set aside. Further contention is, Courts below have wrongly read the evidence brought on record as no admission about the property, being ancestral was given by D.W.1 or his father Ranghnath D.W.2.

3] The submissions are opposed by the learned Counsel for the Respondents. According to the learned Counsel, Mutation Entry in the name of the Appellant of property Gat No.408/2 and in the name of brother Kailash of Gat No.408/1 and family arrangement of 1986 have rightly prompted the court below to presume that there was a partition effected.

4] Considered submissions.

5] Appellant-Ashok alongwith his brother Kailash and one more

sister claimed to be the co-parceners of Rangnath, who initially owned Gat No.408. Gat No.408 was subsequently divided into Gat No.408/1 and 408/2 out of which Gat No.408/1 came to be mutated in the name of brother of the Appellant viz. Kailash, whereas Gat No.408/2 in the name of Appellant-Ashok. Once the aforesaid Mutation Entries are brought on record by the Respondents/Plaintiffs, onus is shifted on the Appellant to prove that family arrangement which prompted such mutation was only for limited purpose of division of Gat No. 408 and not for partition.

6] Even if D.W. 1 – Ashok, the present Appellant and D.W. 2 - Rangnath have come out with defence in regard to family arrangement of the property i.e. Gat No.408, still fact remains that onus on the Appellant of proving that Mutation Entries were made only by virtue of family arrangement of dividing the Gat No.408 into Gat No.408/1 and 408/2 is not discharged.

7] The concurrent findings, accepting the theory of oral family arrangement for partition, are based on appreciation of evidence. In the aforesaid backdrop, against the concurrent findings, no case for

consideration is made out. Appeal fails and the same is dismissed.

8] In view of dismissal of appeal, Civil Application does not survive and the same is also disposed of.

(NITIN W. SAMBRE, J.)