

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

SECOND APPEAL NO.542 OF 2016

Kaluram S. Tapkir & Ors. ... Appellants

Vs

Smt. Shahubai C. Walke and Ors. ... Respondents

...

Mr. Ajay A. Joshi for the Appellants.

CORAM : SANDEEP K. SHINDE J.

DATE : 25 JANUARY, 2019

P.C. :

Heard the learned counsel for the appellants.

2 This appeal is preferred by the defendants in Regular Civil Suit No.29 of 2007. The suit was filed by sisters of defendant no.1 for partition and separate possession. The trial Court decreed the suit, which was challenged in Civil Appeal No.448 of 2013 by defendant no.1 who is brother. The other defendants are sons of defendant no.1. The appellate Court upheld the decree of the trial Court by the judgment and order dated 10th December, 2015. It is against the judgment and decree passed by the appellate Court, this appeal is preferred.

3 The suit was resisted by defendant no.1 on the ground that his father Shivram during his lifetime made an application to the revenue officer and transferred the suit property in his name which was recorded vide mutation entry no.9192. Yet another defence was suit property has already been partitioned between himself and his sons. Both the Courts below declined to rely on mutation entry no.9192 on the valid grounds. It was held by the Courts below that defendant no.1 did not plead that his father Shivram effected the partition of the suit land nor he pleaded oral partition between Shivram and himself. Even the defence witness did not say in his evidence that Shivram had effected oral partition of the suit property. In the given set of facts, the Courts below have rightly held that there was no evidence on record from which it can be inferred and held that the partition had taken place.

. In my view, mutation entry no.9192 cannot assist defendants to claim the partition of the suit property. It is well settled that true test of partition of property according to Hindu Law

is the intention of the members of family to become separate owner. No act done by any member of a joint family can operate as a partition unless it has been done with the intention to put end to his status as coparcener and acquire a new status i.e., the status of a separate owner.

4 That on the basis of mutation entry no.9192, it cannot be held that defendant no.1 has acquired the status of separate owner of the suit property. Thus, appeal does not give rise to substantial question of law. The appeal is ,accordingly, dismissed

(SANDEEP K. SHINDE, J.)