

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**SECOND APPEAL NO. 646 OF 2016**  
**ALONGWITH**  
**CIVIL APPLICATION NO. 1302 OF 2016**

Dada Bhiku Shinde

.....Appellant

V/s.

Shri. Popat @ Anna Bhiku

Shinde and Ors.

....Respondents

\* \* \* \*

None for the appellant.

Mr. Kalpesh U. Patil i/by. Mr. Yogesh V. Patil i/by. Mr. V.D.  
Patil, Advocate for the respondents.

**CORAM : SANDEEP K. SHINDE, J.****Friday, 8<sup>th</sup> March, 2019.****P.C. :**

1. Heard learned Counsel for the respondent.
2. Office has placed the matter on board for speaking to the minutes of the order dated 25<sup>th</sup> January, 2019 pointing out the typographical error in the cause title.
3. The correct number of the Civil Application in the cause-title ought to be shown as '1302 of 2016' instead of '1300 of 2016'.
4. The correction be carried out and the order be read accordingly.

**(SANDEEP K. SHINDE, J)**

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

**SECOND APPEAL NO.646 OF 2016  
WITH  
CIVIL APPLICATION NO.1302 OF 2016**

Dada Bhiku Shinde ... Appellant

Vs

Shri Popat @ Anna Bhiku Shinde & Ors. ... Respondents

...

Mr. Vaibhav R. Gaikwad for the Appellant.

Mr. V.D.Patil for the Respondent No.1.

**CORAM : SANDEEP K. SHINDE J.**  
**DATE : 25 JANUARY, 2019**

**P.C. :**

*Heard the learned counsel for the parties.*

2            *The question is whether the family arrangement pleaded by the defendants amounts to, severance of status of the joint family.*

3            *The appellant is defendant no.3 in the suit for partition filed by his brother. The suit was resisted on the ground that in the year 1978 at the instance of his father , mutation entry was recorded being M.E. No.62 and since then three brothers are in*

*separate possession of specific portion of the suit land. It is the defendants' case that mutation entry no.62 caused severance of the status of the joint family. It is contended that since 1978, defendant no.3 himself and two brothers were in separate possession of 1/3<sup>rd</sup> share in the suit properties. It is contended that the conduct of the parties i.e. cultivation of their respective shares since 1978 till 2011 is sufficient to hold that suit properties were partitioned in the year 1978. The Courts below however found the defendant no.3 in cross-examination has admitted, that what was done by father in 1978 was the family arrangement. The appellant's other two brothers are not supporting the appellant and denied that their father had effected partition in the year 1978. That save and except the mutation entry no.62, there is nothing on record to hold that properties were partitioned in the year 1978. It may also be stated that suit property consists of 15 pieces of agricultural lands. Had there been partition in the year 1978, defendant no.3/appellant herein would have pleaded and given better particulars of the shares of each shareholder in the suit lands. It is not in dispute that the character of the suit properties was joint family properties. Defence*

*of previous partition has been set up by defendant no.3 and, therefore, he ought to have proved the same with cogent and reliable evidence. That merely on the inferential finding, decree of the partition cannot be granted. In my view, Courts below have appreciated the evidence in correct perspective and recorded the finding that the appellant had failed to prove factum of partition at the instance of his father in the year 1978.*

4            *In view of the facts aforesaid, appeal does not give rise to substantial question of law. Appeal is, accordingly, dismissed. The Civil Application is disposed of.*

**(SANDEEP K. SHINDE, J.)**

**Note :** The correction is carried out pursuant to speaking to minutes order dated 8<sup>th</sup> March, 2019.