

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 4 OF 2018
WITH
CIVIL APPLICATION NO. 1057 OF 2016
WITH
CIVIL APPLICATION NO. 1339 OF 2019

Rangrao Krishna Mali

....Appellant

vs.

Anand Shiva Mali & Ors.

...Respondents

Mr. N. N. Pawar, for Appellant.

Mr. Akshay Kulkarni i/b Mr. Ashutosh M. Kulkarni, for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 11 NOVEMBER 2019

P.C. :

1. Heard learned Counsel for the parties.
2. This second appeal challenges two concurrent judgments and decrees passed by the courts below. These decrees were passed in a suit filed by the Respondents (Original plaintiffs) praying for a perpetual injunction. The Appellant herein was original defendant no.5 in that suit.
3. It was submitted by the Defendants before the courts below that there was a prior partition of the suit properties and hence, the suit was not maintainable. Though the Defendants appeared at the hearing of the suit and filed written statement, admittedly they he did not cross-examine the Plaintiffs' witness or support their case of prior partition by leading any evidence at the trial. In the premises, the Plaintiffs' suit came to be decreed by the trial court. The district court upheld the decree, observing *inter alia*

that though Defendants no. 1 to 5 and 7 had come up with a case of previous partition in the year 1975, there was no evidence on record to support their case except for a bare word in their pleadings. The pleadings themselves were termed as vague by the district court, since they contained no particulars of the alleged previous partition or allotment of shares between the parties. The district court observed that the Defendants could not even make out a case that there was sufficient reason for their absence before the trial court for cross-examination of the Plaintiffs' witness; so also, there was no reason for the Defendants not to produce any documentary evidence in support of their case of a previous partition. The district court, accordingly, declined to interfere with the impugned judgment and decree passed by the trial court.

4. There is no merit in the Appellants' application (Civil Application no. 1339/19) seeking production of additional evidence. The application has come at a much belated stage and does not deserve acceptance. The Civil Application is accordingly dismissed.

5. In the premise noted above, no substantial question of law arises in this second appeal for this court to consider. The second appeal is accordingly dismissed.

6. In view of the dismissal of the second appeal, Civil Application No. 1057/16, which is for stay of the impugned orders of the courts below, does not survive and is disposed of accordingly.

(S.C. GUPTE, J.)