

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

SECOND APPEAL NO.399 OF 2015
WITH
CIVIL APPLICATION NO.901 OF 2015
WITH
SECOND APPEAL NO.380 OF 2015
WITH
CIVIL APPLICATION NO.843 OF 2015

Shri Khandu B. Boke ... Appellant
Vs
Shri Waman S. Boke and Ors. ... Respondents
...
Mr. Girish R. Agrawal for the Appellant.

CORAM : SANDEEP K. SHINDE J.
DATE : 4 FEBRUARY, 2019

P.C. :

Heard learned counsel for parties.

2 The Second Appeal No.399 of 2015 is filed by the plaintiff in Regular Civil Suit no.47 of 2006. This suit for declaration of title and injunction was filed against the respondents herein in respect of suit properties bearing Block No.25 and 51. The suit was dismissed throughout and hence, this Second Appeal.

3 The Second Appeal No.380 of 2015 is preferred by the defendant in Regular Civil Suit No.23 of 2008, which was filed by the respondents herein, for partition and separate possession in respect of land block nos.17A, 17B, 25,51 and 45. This suit came to be decreed throughout and hence this appeal.

4 Khandu, Sukha and Kalu are brothers. Khandu and his legal representatives filed suit for declaration of their title inter-alia contending that Suit No.25 is self acquired property of Khandu and Land Gat No.51 has fallen to his share in the previous partition.

5 Both the suits were tried together. It is held by the trial Court that

(1) Properties 17A, 17B, 45, 25, 51 are joint family properties;

(2) that Appellant/plaintiff did not prove that Gat No.25 was his self-acquired property;

(3) That there was sufficient nucleus wherefrom suit property gat no.25 was purchased by Khandu;

(4) That previous partition of the suit land was

not proved by the appellant herein.

6 The Courts below have rendered finding of fact that the appellant could not establish that Gat No.25 was purchased by Khandu from his independent source of income. Equally, finding is rendered by the Courts below, that previous partition was effected between the members of the family, and hence rejected the suit claim of the appellant.

7 I have gone through the judgments of the Courts below. In fact, mutation entry no.295 was recorded at the instance of Khandu, in respect of the land Gat No.25 whereby names of the legal representatives of Sukha and Kalu were mutated in the revenue records.

8 Thus, taking into consideration the evidence on record, in my view, finding of fact recorded by the Courts being consistent thereto, both the appeals do not give rise to substantial questions of law.

9 Though it is contended that the parties to the suit being tribals (Mahadev Koli) Hindu Law is not applicable, but record does

not indicate evidence on this aspect was led by the appellant.

10 Thus, both the appeals are accordingly dismissed and
civil applications are also disposed of.

(SANDEEP K. SHINDE, J.)