

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

***SECOND APPEAL NO.266 OF 2017
WITH
CIVIL APPLICATION NO.1554 OF 2016***

Mohan Vitthal Patil
(Deceased Through Legal Heirs)

... Appellants
(Org. Defendants)

Vs

Jaywnt Tukaram Patil and Ors.

... Respondents
(Org. Plaintiffs)

...

Mr. Kuldeep U. Nikam for the Appellants.

Mr. A.M.Kulkarni with Vaibhav Ramchandra Gaikwad for the
Respondent Nos.1 to 8, 10 to 13.

CORAM : SANDEEP K. SHINDE J.
DATE : 29 MARCH, 2019

P.C. :

Heard learned counsel for the parties.

2 This appeal is preferred against the judgment and order dated 29th December, 2015 passed in Regular Civil Appeal No.73 of 2015. Appellants are defendants in the suit for partition instituted by the respondent no.1 herein. It is plaintiffs' case that in 1968, their predecessor Tukaram Patil, defendant nos.1 and 2 jointly purchased

the suit lands which consist of twenty pieces of land from Ananda Shripati Patil. The revenue record shows that the plaintiffs defendant nos.1 and 2 are in joint possession of the suit lands.

3 In the year 2003, plaintiffs, being heirs of Tukaram Patil, filed the suit for partition by metes and bounds and sought decree for $1/3^{\text{rd}}$ share in the suit lands.

4 Appellants, being defendants in the suit would assert that suit properties were partitioned soon after, year 1968 and since then plaintiffs, defendant nos.1 and 2 are in possession and cultivating their respective demarcated share in the suit lands. It is their case that since 1968 they have developed Land Gat Nos.1567 and 1569, which were fallen to their share in partition by constructing poultry shed and cultivating coconut, mango and such other fruit bearing trees.

5 Both the Courts below have held that the defendants could not establish that the suit lands were partitioned in the year 1968. The learned trial Judge however to ascertain, whether defendant no.1 has developed lands Gat Nos.1567 and 1569 had

appointed Court Commissioner. His report shows that there are poultry sheds and fruit bearing trees in Gat Nos.1567, 1568 and 1569.

6 The learned counsel for the respondents would submit that the Appellate Court has accepted and recorded the finding in paragraph 20 that the defendants have developed Gat No.1567 and 1569 wherein there is poultry shed and fruit bearing trees. The learned Appellate Court thus, suggested while effecting the partition by metes and bounds preferably these two Gat Numbers may be given to the defendants towards their share. In the next paragraph of the judgment, the learned Appellate Court has held that parties to the suit have equal shares even in Gat Nos.1567 and 1569. Relying on these observations, the learned counsel for the appellants would submit that there is ambiguity in findings and this matter be remanded to the learned District Court for recording the finding on limited issue, whether defendants have proved and established that they has developed Gat Nos.1567 and 1569 by planting fruit bearing trees.

7 The learned counsel appearing for the contesting Respondents would submit that plaintiffs do not have objection if the entire Gat No.1569 wherein the poultry is constructed is given to the appellants towards their share. He would submit that so far as Gat No.1567 is concerned, having regard to the total area of the suit lands and in view of the fact that plaintiffs are giving up their share in 1567, plaintiffs and defendant no.2 may be permitted to share Gat No.1567 to the extent of 27 R and 26 R respectively. The learned counsel has placed on record a partition chart which suggest equitable partition. In fact, it shows appellants would get 99R; Plaintiffs 94R and Defendant No.2 94R.

8 Though it is contended by the learned counsel for the appellants that appellants have planted fruit bearing trees in Gat No.1567, which is disputed by the contesting respondents, in my view, the appellants ought to have examined Court Commissioner or other witness to substantiate this fact in issue.

9 Both the Courts below have recorded finding of fact,

which is consistent with the evidence on record and no perversity has been brought to my notice. Thus, in my view, appeal does not give rise to any substantial question of law. That even otherwise, partition suggested by the contesting respondents is fair which would take care and protect interest of the appellants. That for the reasons aforesaid, appeal is dismissed with no order as to costs. All civil applications are disposed of .

(SANDEEP K. SHINDE, J.)