

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

**SECOND APPEAL NO.723 OF 2019
WITH
CIVIL APPLICATION NO.1506 OF 2019**

Kacharu Damu Kandekar		
And Others	...	Appellants/Org. Defendants
Versus		
Baraku Vishram Kandekar	...	Respondent

.....

Mr. Prashant D. Patil for the Appellants.

Mr. N.V. Bandiwadekar a/w Mr. Vinayak R. Kumbhar, Mr. Ashutosh B. Patil i/b Ms. Ashwini N. Bandiwadekar and Ms. Neha N. Bandiwadekar for the Respondent.

Mr.Tanaji K. Kandekar, Appellant No.3 present in-person.

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CORAM : S.C. GUPTE, J.

DATE : 15 NOVEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Second Appeal challenges two concurrent judgments and decrees of the courts below. The controversy in the Special Civil Suit filed by the Respondent herein concerns the possession of the house property bearing No.402 in the land bearing Block No.417 of the Village Lakhalgaon, Tehsil and District Nasik. The case of the plaintiff in the suit was that the suit property, which originally

formed part of joint family property of the parties, was partitioned in the year 1963, whereupon the suit property came to the share of the plaintiff. The case of the Respondents (original defendants) before the court was that though the partition of joint family property was effected in the year 1963, this particular property was kept as common property, since it contained houses and a well belonging to the family members. Both courts have come to a concurrent conclusion that there was no evidence to believe that the suit house had been kept aside as common property during partition. The courts believed the evidence of the plaintiff that after partition of the joint family property, House No.402 was allotted to the share of the plaintiff for residence, whilst the defendants were allotted Block No.422, where they have constructed a house.

3 These are pure questions of fact, on which two courts below have rendered concurrent findings. Nothing is pointed out to this court to show that the conclusions of the courts are not supported by any evidence or that some relevant or germane material was disregarded by the courts below or that the courts acted on some irrelevant or non-germane material. The controversy purely concerns appreciation of evidence and no substantial question of law arises for the consideration of this court.

4 The Second Appeal is, accordingly, dismissed.

5 Learned Counsel for the Appellants seeks two months' time to vacate the suit property and hand over vacant possession thereof to the Respondent (original plaintiff). Learned Counsel undertakes to the court, after taking instructions from his client, namely, Appellant No.3, who is present in court, that the Appellants shall vacate the suit property and hand over possession thereof to the Respondent/plaintiff at the end of this two months' period. The Appellants are directed to furnish a usual undertaking in this behalf within two weeks from today before the Registry. A copy of the undertaking may be furnished to the Advocate of the Respondent/plaintiff. Subject to such undertaking being furnished, the Respondent/plaintiff is directed not to execute the judgments and decrees passed by the courts below for a period of two months from today.

6 In view of the disposal of the appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)