

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 463 OF 2015
IN
CIVIL APPLICATION NO. 994 OF 2015
IN
SECOND APPEAL NO. 463 OF 2015

Shri. Krishna Doula Navale	Appellant
V/s.	
Sunil Laxman Thanekar and anr.	Respondents

* * * *

Mr. Amit Borkar, Advocate for the appellant.

None for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 5th February, 2019.

P.C. :

1. Heard learned Counsel for the appellant.
2. The appellant was defendant no.1 in Regular Civil Suit No. 67 of 2007. This suit was instituted by the respondent no.1 for partition and perpetual injunction. The suit land is Gat No. 779 admeasuring 87 ares out of which

29 Ares land was purchased by the plaintiffs' father. It is the plaintiffs' case that, one Narayanrao Navale, co-owner had one-third undivided share in the suit land i.e. Gat No. 779. Other co-owners are defendants no.1 and 2. On 31st May, 1979 Narayanrao, sold 8 Ares land to the plaintiffs' father under the sale-deed. Thereafter, the legal heirs of Narayanrao, sold 21 Ares land out of Gat No. 779 to Shrikrishna Sahakari Co-operative Water Supply Society by executing sale-deed on 12th January, 1989. Subsequently, on 19th March, 1977 plaintiff's father purchased the said 21 Ares land from Shrikrishna Society. It is the plaintiffs' case that, he is in possession and enjoyment of the said purchased portion, i.e. 29 Ares land situate towards the western end of land Gat No. 779. The plaintiff pleaded that, suit land was not partitioned between his predecessor-in-title and respondents, by metes and bounds and therefore being purchaser of undivided share, the subject suit was filed, for partition.

3. The appellant-defendant no.1 resisted the suit contending that, the suit land was partitioned 50 to 60

years back and area admeasuring 20 ares had fallen to the share of the predecessor-in-title of the plaintiff. In other words, it is contended by the defendants that the predecessor-in-title of the plaintiff was entitled to alienate only 20 Ares out of Gat No.779. Another contention raised, is that, since the partition was effected between the defendants and the predecessor-in-title-of-the-plaintiff, fifty years before and since the plaintiff was put in demarcated portion of the Gat No.779, the suit for partition was not maintainable.

4. The trial Court dismissed the suit. However, the Appellate Court passed the decree of partition against which defendant no.1 has preferred this Appeal.

5. Admittedly, the plaintiff is asserting his right for partition on the basis of the two sale-deeds, one dated 31st May, 1979 and another dated 19th March, 1977 vide which land admeasuring 21 Ares and 8 Ares was purchased by the plaintiffs' father. It is not in dispute that, the defendants have not challenged either of the sale-deeds which was always open to them by contending that in the family

arrangement only land to the extent of 20 Ares had fallen to the share of Narayanrao Navale, the predecessor-in-title of the plaintiff. Having not done so, now the defendant cannot contend that Narayanrao Navale had no right to alienate the land in excess of 20 Ares. Today, it cannot be contended that the suit for partition was not maintainable because the suit proceeds on the footing that plaintiff's father had purchased one-third undivided share of Narayan in suit land Gat No. 779. In view of the facts aforesaid, the Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

6. In view of dismissal of the Appeal, Civil Application No. 994 of 2015 taken out for stay does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)