

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****SECOND APPEAL (ST) NO. 23471 OF 2019  
ALONGWITH  
CIVIL APPLICATION NO.1314 OF 2019****Arun Bandopant Bapat & Ors.****..... Appellants/  
Applicants****VERSUS****Bhanudas Bandopant Bapat****..... Respondent**

Mr.Sharad V. Kulkarni for the Appellants/Applicants.

Mr.Abhijeet P. Kulkarni for the Respondent.

**CORAM : R.D. DHANUKA, J.****DATE : 1<sup>st</sup> OCTOBER, 2019****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and decree dated 21<sup>st</sup> June, 2019 passed by the learned District Judge in the Regular Civil Appeal No.63 of 2018 and also the judgment and decree passed by the 4<sup>th</sup> Joint Civil Judge, Junior Division in Regular Civil Suit No.494 of 2013.

2. The suit was filed by the respondents (original plaintiffs) *inter alia* praying for the partition and separate possession of the 1/3rd share of Mr.Bandopant Bapat who was pre-decessor of the parties to the suit.

3. Learned counsel for the appellants submits that in the earlier round of litigation in the Letters Patent Appeal No.18 of 1996, the Division Bench of this court passed an order dated 4<sup>th</sup> October,2001 holding that Mr.Bandopant Bapat was entitled to 1/3rd share in the suit

property. He submits that the said decree was passed by the Division Bench of this court in the said Letters Patent Appeal in respect of only the appellants thereto and not the original plaintiffs in the proceedings before the learned trial judge. He submits that there was thus no question of any further partition in respect of the said 1/3rd share which was decided in the said Letters Patent Appeal. It is submitted that the learned trial judge as well as the First Appellate Court have thus rendered perverse findings of fact and contrary to the order passed by the Division Bench of this court in the earlier round of litigation.

4. A perusal of the order passed by this court in said Letters Patent Appeal No.18 of 1996 on 4<sup>th</sup> October, 2001, indicates that the said appeal was filed by Mr.Bandopant Sitaram Bapat and since his demise, his legal heirs were brought on record to pursue the said appeal further. The appellants are some of the legal heirs of the said Mr.Bandopant Bapat. In the said proceedings, this court was of the view that the said Mr.Bandopant was entitled to seek partition of the suit property as he had 1/3rd share then and was further entitled to possession of his 1/3rd share.

5. Insofar as the the suit for partition which was subject matter of this second appeal is concerned, the plaintiffs had filed a suit for further partition of the said share of Mr.Bandopant Bapat in the said one third share in the property.

6. The trial court after considering the oral and documentary evidence, decreed the said suit partly. In the appeal preferred by the appellant herein, the learned District Judge after considering the oral and documentary evidence, has partly allowed the said appeal and has

held that the plaintiffs would be entitled to receive 1/3rd share in the suit property whereas the defendant nos. 1 to 5 were entitled to receive 1/21th share each in the suit properties and defendant nos. 6 to 9 were entitled to receive 1/21th share in common in the suit properties. The First Appellate Court has accepted the submissions made by the appellants herein and has divided the property in equal parts amongst all the legal heirs of Mr.Bandopant Bapat.

7. In my view, there is thus no substance in the submission made by the learned counsel for the appellants that the decree passed by this court in the Letters Patent Appeal No.18 of 1996 by judgment dated 4<sup>th</sup> October,2001 was deciding the shares of all the appellants as 1/3rd share and the said decree was not deciding the share of Mr.Bandopant Bapat alone. The arguments advanced by the learned counsel is *ex-facie* contrary to the judgment and decree passed in Letters Patent Appeal No.18 of 1996.

8. I do not find any infirmity in the order passed by the lower Appellate Court. No substantial question of law arises in this second appeal.

9. Second appeal is devoid of merit and is accordingly dismissed. In view of the dismissal of the second appeal, Civil Application No.1314 of 2019 does not survive and is accordingly dismissed. No order as to costs.

**[R.D.DHANUKA, J.]**