

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

**SECOND APPEAL NO. 210 OF 2017
WITH
CIVIL APPLICATION NO. 485 OF 2017**

Narayan Murari Revadekar and others ... Appellants
Versus
Pramod Govind Revadekar and others ... Respondents

.....
Mr. Yatin Kochare for the Appellants.

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**CORAM : SANDEEP K. SHINDE, J.
DATE : 14th JANUARY, 2019.**

P. C.:

1. This appeal is preferred by the original defendants against whom a decree of partition was drawn by the trial Court, which was confirmed by the First Appellate Court. It is against the decree of the Appellate Court, the defendants have preferred this Second Appeal.

2. Heard learned Counsel for the appellant.

3. The plaintiffs had filed suit for partition of the property bearing House No. 527 and land S. No. 630/31 (for short 'suit property'). The defendants denied the claim and had set up the defense that House No. 527 and land S.No.630/31 is their self

acquired property. It is defendants case, that predecessor-in title of the plaintiffs and defendants sold part S.No.630/31 and House No.527 to Mr. Dantas by registered sale-deed on a condition to repurchase it within a period of five years. It is defendants' case that upon expiry of period of five years subject properties vested absolutely in Mr. Dantas. It is defendants' case that their predecessor in title Mr. Maruti paid Rs.500 to the son of Mr. Dantas in 1967 i.e. after the period provided for repurchase and there upon a deed of re-conveyance was executed. It is defendants' case that their predecessor had paid Rs.500/- from his independent source of income, in individual capacity. In other words, it is contended that having paid Rs.500/- by Maruti to the son of Dantas from his separate source of income, suit property ceases to be joint family property and acquires character of self acquired property, which is succeeded by the defendants. It is therefore contended that the suit property cannot be partitioned.

4. Both the Courts upon appreciating the evidence decreed the suit and held the defendants had failed to prove that the property which was sold to Mr. Dantas and eventually reconveyed was self acquired property of the defendants.

5. The deed of conveyance of January 1960, shows that the property was sold to Mr. Dantas, which defendants had agreed to repurchase within five years.

6. Learned Counsel for the appellants has placed on record a Mutation Entry No. 9198 recorded in September, 1967 which according to him fortified his contention.

7. I have gone through the said Mutation Entry No.9198. It records the history of transaction of 1960 and further records a fact that Maruti had paid the amount of Rs.500/- as '*Karta*' and on behalf of a joint family. The detailed description in the mutation entry in no manner supports the contention of the defendants and as such character of the suit property had not changed and continued to remain as a joint family property.

8. It is not in dispute that at the given point of time i.e. in 1967 the parties to the suit were holding other joint family properties. In fact, there is no any evidence to show that Maruti had independent source of income. It is contended that though the plaintiffs sought to prove that the suit properties were joint family properties but having not proved the said fact, it is to be held that the suit properties were self acquired properties of

Maruti. Learned Counsel thus relied on the judgment of the Supreme Court in the case of Makhan Makhan Singh (dead) by L.Rs. Vs. Kulwant Singh - (2007) 10 SCC 602. This judgment was cited in support of his submissions that the onus was on the plaintiffs to prove that, suit properties were the joint family properties. In my view the ratio laid down in the cited judgment is not applicable to the facts of the case. In the case in hand the first document of 1960 and the Mutation Entry No.9198 made in 1967 has established the fact that in 1967 the amount/consideration was paid by Maruti to the son of Mr. Dantas for and on behalf of the joint family. More so, the defendants did not led any evidence to establish a fact that in 1967 Maruti had an independent source of income.

9. In the circumstances, I do not see any merit in the present appeal. The appeal does not give rise to any substantial question of law. The appeal is dismissed. Pending civil application does not survive and is disposed of.

10. At this point of time learned Counsel for the appellants seeks stay to the operation of this order for some period. This is the decree of partition. The decree passed by the trial Court has been confirmed by the Appellate Court. Though it is submitted that the property has not been actually partitioned, nothing is

placed on record to substantiate the same. In view of this, the request to stay the operation of this order, is declined and rejected accordingly.

(SANDEEP K. SHINDE, J.)