

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

SECOND APPEAL NO.698 OF 2017

Shri Khandu Vithoba Kadam

Since deceased through his legal
representative

1A. Smt. Babubai Khandu Kadam

Since deceased through her legal
representative

1A(i) Shri Machindra Dattatraya Shinde

...Appellant

Vs

Shri Bhiva Vithoba Kadam

Since deceased through his legal
representatives

1A. Kisan Bhiva Kadam

& Ors.

... Respondents

...

Mr. Manoj A. Patil I/by Mr. Ashish P. Pawar for the Appellant.

None for the Respondents.

CORAM : SANDEEP K. SHINDE J.

DATE : 22 MARCH, 2019

P.C. :

Heard learned counsel for the appellant.

2 Appellant's suit for partition and separate possession was
dismissed on the ground that suit properties were partitioned in the
year 1949 terms of which were recorded between the members of the

family on 29th July, 1953. This document was produced before the Trial Court by the defendants at Exhibit 132 and proved the same. In view of this, the learned trial Judge dismissed the suit and the Regular Civil Appeal preferred by the plaintiff also met with the same fate.

3 It is against the decree passed in the Regular Civil Appeal No.736 of 1993, this appeal is preferred.

4 Heard learned counsel for the appellant.

5 It is settled position of law that the High Court will not interfere with the concurrent finding of the Courts below but it is not absolute rule. Some of the well-recognised exceptions are;

(i) Courts below have ignored material evidence or acted on no evidence;

(ii) Courts below have drawn wrong inference from two facts by applying law erroneously; or

(iii) Courts below have wrongly passed burden of risk.

6 It is the appellant's case that partition deed dated 27th September, 1953 was executed to defeat the decree of maintenance

passed in favour of his wife in the year 1951. The learned counsel has taken me through the evidence of defendant no.1, who would admit this fact, however, the fact remains that in the year 1953, defendant no.1 was hardly 3 years old and it is not conceivable that he would know about the decree of maintenance passed against the wife of the plaintiff in the year 1951 and fact that to defeat the decree. Partition deed was executed in the year 1953.

7 Besides, there is no dispute that this partition deed has been acted upon and effect has been given in the Revenue record. A fact cannot be ignored as to why the appellant/plaintiff had filed suit after long period in March, 1986 when it was within his knowledge that the family arrangement partition deed of 1953 was not to be acted upon and it was executed just to defeat the decree of maintenance passed in favour of his wife.

8 Thus, taking into consideration facts of the case and evidence on record, case of the appellant does not fall in any of the exceptions as carved out hereinabove.

9 Appeal does not give rise to substantial question of law.
Appeal is, accordingly, dismissed with no order as to costs.

(SANDEEP K. SHINDE, J.)