

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**Second Appeal No. 592/2018**  
**Uttam Polhe Vs. Renukabai Markand & Ors.**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. Anand Deshpande Advocate for appellant  
Mr. S.S. Bhalerao Advocate for respondents

**CORAM : MANISH PITALE, J.**

**DATED : SEPTEMBER 23, 2019**

Heard learned counsel for the appellant.

2. By this appeal the appellant is challenging concurrent orders passed by the two Courts below, whereby suit filed by the appellant for declaration, partition and separate possession of the suit property was dismissed.

3. The case of the appellant was that a partition deed dated 23.05.1991, said to have been executed between the original defendants was illegal, false and bogus because the appellant had an interest in the suit property and that he was not even made a party to such purported partition deed. The appellant claimed that he had share in the suit property.

4. The source of such right was claimed by the appellant through his father Narayan. It was pointed

out that Narayan and Tukaram (predecessors of original defendants), were real brothers and that the suit property was being cultivated by said Tukaram, but, upon his demise, Narayan had come in possession of the same. It was claimed that since Narayan was predecessor of the appellant herein, appellant was also entitled to share in the suit property.

5. This was opposed by the original defendants i.e. predecessors of the respondents herein, who were sisters and daughters of said Tukaram. The original defendants brought on record relevant oral and documentary evidence to show that there had been a litigation between the contesting parties before the Tenancy Court, wherein the appellant and other descendants of Narayan were party. The said litigation had ended up before this Court and the findings rendered in the said litigation had attained finality. It was brought to the notice of the Courts below that since 27.11.1970, the original defendants were in possession of the suit property and they were claiming through said Tukaram. It was found that said Tukaram was held to be a protected tenant in the suit property and that even purchase certificate dated 28.02.1988, had been issued in favour of the original defendants. In these circumstances, it was claimed by the original defendants that when their right, title, interest and possession in the suit property had been proved and the same had attained finality and the claim was

contested by the descendants of Narayan, there could be no hindrance for them to have executed the aforesaid partition dated 23.05.1991. It was pointed out that since the appellant could not claim any interest right, title or interest in the suit property, there was no question of the challenge raised by him against the said partition deed succeeding before the Court.

Both the Courts below have appreciated the oral and documentary evidence on record, including the aforesaid rounds of litigation, arising from tenancy Court proceedings to come to the conclusion that the appellant (original claimant) had failed to make out his case for declaration, partition and separate possession, as claimed by him.

The learned counsel for the appellant has not been able to demonstrate any error in the appreciation of evidence on record or to show that the concurrent findings rendered by the two Courts below could be said to be perverse.

At this stage, the learned counsel appearing on behalf of the appellant sought to rely upon the provisions of The Berar Regulation of Agricultural Leases Act, 1951, particularly Section 2 (b) thereof, to claim that the said Tukaram was cultivating the suit property as Karta of the Hindu undivided family and, therefore, it was to be deemed that all the members of

such family were personally cultivating the suit land.

It is undisputed that the said Berar Regulation of Agricultural Leases Act, 1951 was repealed by Section 152 of the Maharashtra Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958.

In any case, there is no material in the form of specific pleadings and consequent evidence placed on record on behalf of the appellant to claim benefit of the explanation to Section 2(b) of The Berar Regulation of Agricultural Leases Act, 1951, apart from the fact that the applicability of the Act is questionable in the facts and circumstances of the present case.

In view of the above, this Court finds that no substantial question of law arises in this appeal and, therefore, it is dismissed.

JUDGE